TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible].

No. 611.

R. A. GREEN, H. W. VOIGHT, N. M. CHRISTIANSON, AND F. V. WOODWORTH, PLAINTIFFS IN ERROR,

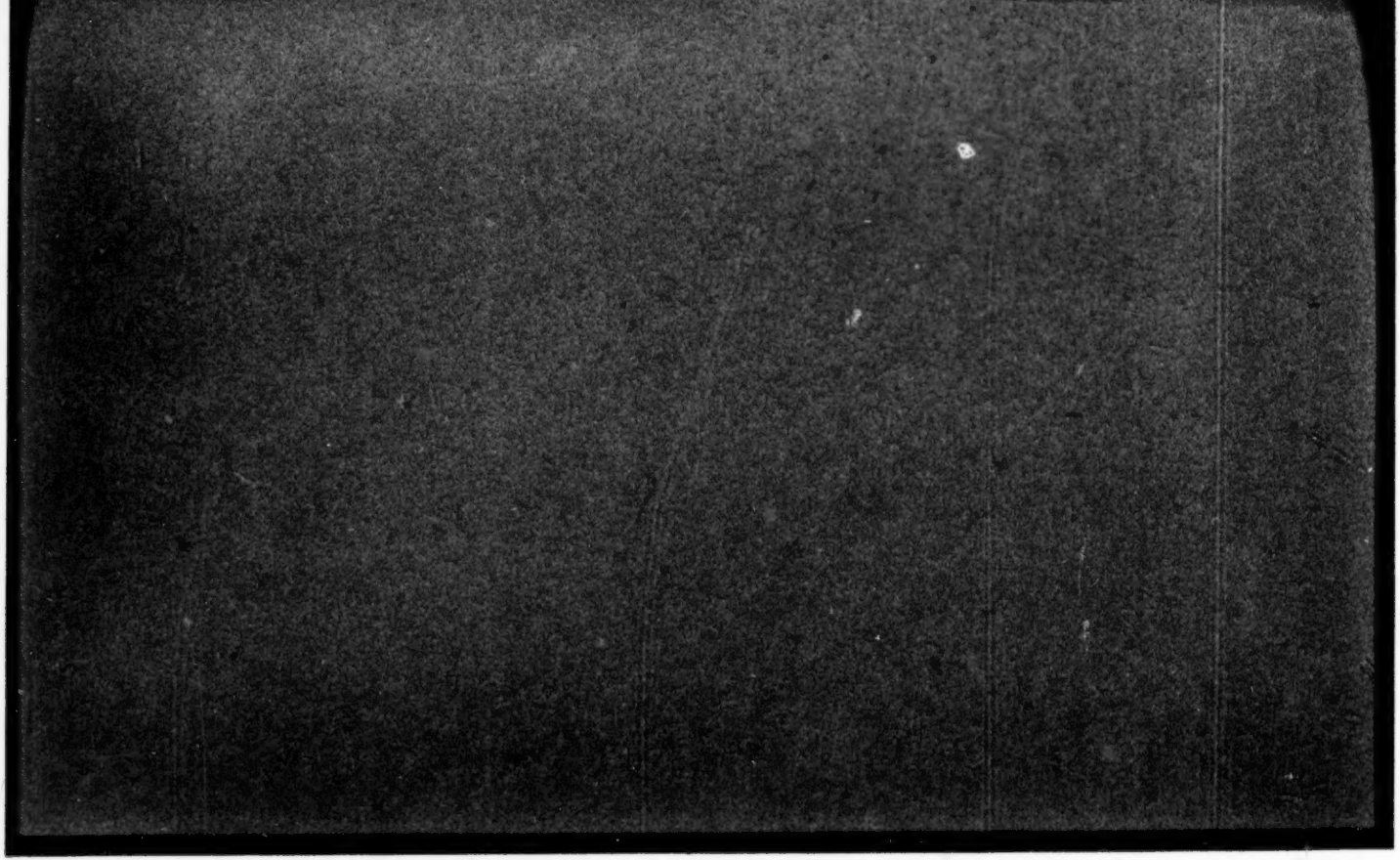
vs.

LYNN J. FRAZIER, GOVERNOR; WILLIAM LANGER, ATTORNEY GENERAL, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH DAKOTA.

FILED MARCH [illegible], [illegible].

(27,[illegible])



(27,566)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 811.

E. A. GREEN, H. W. VOIGHT, N. M. CHRISTIANSON, AND F. V. WOODWORTH, PLAINTIFFS IN ERROR,

vs.

LYNN J. FRAZIER, GOVERNOR; WILLIAM LANGER, ATTORENY GENERAL, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH DAKOTA.

INDEX.

	Original.	Print.
Letter of clerk of supreme court of North Dakota to clerk of district court	1	1
Certificate of clerk of district court	2	1
Notice of appeal	3	2
Undertaking on appeal	4	3
Specification of errors	6	4
Stipulation as to record	7	5
Clerk's certificate on change of venue	9	6
Summons	10	7
Complaint	11	8
Acceptance of service	21½	14
Demurrer	22	15
Order to show cause	23	16

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 30, 1920.

	Original.	Print.
Demand for change of place of trial	25	18
Affidavit of Albert E. Sheets, Jr	26	19
Order for change of place of trial	28	20
Motion to fix date of hearing on order to show cause	29	22
Order to fix date of hearing on order to show cause	30	23
Demurrer	31	24
Order sustaining demurrer	32	25
Clerk's certificate	33	26
Judgment	34	27
Opinion of Grace, J	35	28
Concurring opinion of Bronson, J	69	49
Concurring opinion of Birdzell, J	72	50
Dissenting opinion of Christianson, C. J	76	53
Petition for writ of error	77	53
Assignment of errors	80	55
Bond on writ of error	81	56
Writ of error	83	58
Citation and service	84	59
Clerk's certificate	86	60

1 Bismarck, N. D., March 4, 1920.

Charles Fisher, Esq., Clerk District Court, Bismarck, N. D.

DEAR SIR:

As you will note from the enclosed documents a writ of error has been sued out in the case of A. E. Green, et al. vs. Lynn J. Frazier, et al., which writ was issued on January 31, 1920. By virtue thereof the record must be in Washington within sixty days from that date.

It has been determined that inasmuch as the record was transmitted to your Court with the remittitur that the judgment roll should be certified as under your seal. You are, therefore, requested to prepare and transmit to this Court such certified copies of the judgment roll.

Respectfully,

J. H. NEWTON,
Clerk North Dakota Supreme Court.

2 STATE OF NORTH DAKOTA,
County of Burleigh, ss:

Office of Clerk of District Court.

I, Chas. Fisher, Clerk of the District Court within and for the County of Burleigh and State of North Dakota, do hereby certify that the papers hereto attached are correct copies of the original Judgment Roll consisting of the following papers, to-wit: Notice of Appeal, Undertaking on Appeal, Specifications of Error, Stipulation, Clerk's Certificate on Change of Venue, Summons, Complaint, Demurrer, Order to Show Cause, Demand for Change of Place of Trial, Affidavit, Order for Change of Place of Trial, Motion to fix date of hearing on Order to Show Cause, Order fixing date on Order to Show Cause, Demurrer, Order, Clerk's Certificate on Appeal, as the same remain on file in my office.

Witness my hand and the seal of said Court at Bismarck, N. D., this 5th day of March, A. D. 1920.

[Seal District Court, Burleigh County, State of North Dakota.]

CHAS. FISHER,
Clerk.

3 STATE OF NORTH DAKOTA,
County of Burleigh, ss:

In District Court, Fourth Judicial District.

E. A. GREEN, H. W. VOIGHT, M. N. CHRISTENSEN, and F. V. WOODWORTH, Plaintiffs,

vs.

LYNN J. FRAZIER, Governor; WM. LANGER, Attorney General; JOHN N. Hagen, Commissioner of Agriculture and Labor; Obert Olson, Treasurer, and The Industrial Commission of North Dakota, Defendants.

Notice of Appeal.

To Lynn J. Frazier, Governor; William Langer, Attorney General; John N. Hagen, Commissioner of Agriculture and Labor; Obert Olson, Treasurer, and the Industrial Commission of North Dakota, above-named defendants, and to their attorneys, William Langer, Edward B. Cox, Albert C. Sheets, Jr., and Wm. Lemke, Attorney for Lynn J. Frazier, John N. Hagen, and the Industrial Commission of North Dakota:

Please Take Notice: That the plaintiffs' above named Appeal to the Supreme Court of the State of North Dakota from the Order rendered and entered by the above named Court herein on the 26th day of November, 1919 sustaining the demurrers in favor of the defendants and against the plaintiffs.

Dated this 26th day of November, 1919.

HARRY LASHKOWITZ,
Attorney for Plaintiffs, 11-17 *Stern Bldg., Fargo, N. Dak.*

[Endorsed:] Due and personal service of the within Notice of Appeal is hereby admitted this 4th day of Dec., 1919, at Bismarck, N. D. William Langer. Filed in District Court, Burleigh County, North Dakota, Dec. 4, A. D. 1919. Chas. Fisher, Clerk, by Emma J. Fisher, Deputy.

4 STATE OF NORTH DAKOTA,
County of Burleigh, ss:

In District Court, Fourth Judicial District.

E. A. GREEN, H. W. VOIGHT, M. N. CHRISTENSEN, and F. V. WOODWORTH, Appellants,

vs.

LYNN J. FRAZIER, Governor; WM. LANGER, Attorney General; John N. Hagen, Commissioner of Agriculture and Labor, and Obert Olson, Treasurer, and The Industrial Commission of North Dakota, Respondents.

Undertaking on Appeal.

Whereas, on the 26th day of November, A. D. 1919, the Hon. W. L. Nuessle, one of the judges of the Fourth Judicial District did sustain the demurrers filed by the defendant and respondents to appellant's complaint and the above entitled plaintiffs and appellants feeling aggrieved thereby intend to appeal and do appeal from the Order sustaining demurrers to the Supreme Court of the State of North Dakota.

Now, therefore, we, F. D. Woodworth, principal, and W. J. Prater and Robert D. Blakemore, of the County of Burleigh, State of North Dakota, do hereby undertake, promise and agree, in the sum of Two Hundred and Fifty Dollars that appellants will pay all costs which may be awarded against them on the appeal, not exceeding the above mentioned sum.

Dated this 29th day of November, A. D. 1919.

F. D. WOODWORTH.
W. J. PRATER.
ROBERT D. BLAKEMORE.

W. A. ANDERSON.
DAISY DEAN.

STATE OF NORTH DAKOTA,
County of Burleigh, ss:

5 On this 29th day of November, before me Daisy Dean, a notary public in and for said county and state appeared F. D. Woodworth, W. J. Prater and Robert Blakemore, known to me to be the persons who are described in and who executed the above and foregoing undertaking and acknowledged to me that they executed the same.

[NOTARIAL SEAL.] DAISY DEAN,
Notary Public, Burleigh County, N. D.

My commission expires Feb. 4, 1925.

STATE OF NORTH DAKOTA,
County of Burleigh, ss:

F. D. Woodworth, W. J. Prater and Robert B. Blakemore, bei severally sworn, each for himself, says that he is the surety with mentioned; that he is a resident and freeholder of the County Burleigh and State of North Dakota and that he is worth t amount of $250.00, specified in the within undertaking, above l debts and liabilities and exclusive of his property exempt from ex cution.

Subscribed and sworn to before me this 29th day of Nov., 191
[NOTARIAL SEAL.] DAISY DEAN,
Notary Public, Burleigh County, N. Dak.

My commission expires Feb. 4, 1925.

[Endorsed]

The within undertaking on appeal and the sureties thereon a hereby approved this 4th day of December, 1919.
CHAS. FISHER,
Clerk of Court.

Due and personal service of the within undertaking on appeal hereby admitted this 4th day of December, at Bismarck, N.
WILLIAM LANGER.

Filed in District Court, Burleigh County, North Dakota, Dec. A. D. 1919. Chas. Fisher, Clerk. By Emma J. Fisher, Deputy.

6 STATE OF NORTH DAKOTA,
County of Burleigh, ss:

In District Court, Fourth Judicial District.

E. A. GREEN, H. W. VOIGT, N. M. CHRISTENSEN, and F. V. Woo WORTH, Plaintiffs,

VS.

LYNN J. FRAZIER, Governor; WM. LANGER, Attorney Genera John N. Hagen, Commissioner of Agriculture and Labor, a Obert Olson, Treasurer of the State of North Dakota, and The I dustrial Commission of North Dakota, Defendants.

Specifications of Error.

Come now the above named plaintiffs and appellants and speci the errors of law on which they and each of them rely on this appe for a reversal in this case.

1.

The Court erred in sustaining the demurrers to the complaint.
Dated this 13th day of December, A. D. 1919.

HARRY LASHKOWITZ,
Attorney for Plaintiff, 11-17
Stern Bldg., Fargo, N. Dak.

[Endorsed]

Filed in District Court Burleigh County, North Dakota, December 16th, A. D. 1919.

CHAS. FISHER,
Clerk,
By EMMA J. FISHER,
Deputy.

7 STATE OF NORTH DAKOTA,
County of Burleigh, ss:

In the District Court, Fourth Judicial District.

E. A. GREEN, H. W. VOIGT, N. M. CHRISTENSEN, and F. V. WOODWORTH, Plaintiffs,

VS.

LYNN J. FRAZIER, Governor; WM. LANGER, Attorney General; JOHN N. Hagen, Commissioner of Agriculture and Labor, and Obert Olson, Treasurer of the State of North Dakota, and The Industrial Commission of North Dakota, Defendants.

Stipulation.

It is hereby agreed to by and between the parties above named through their respective attorneys, Harry Lashkowitz, representing the plaintiffs and Edward B. Cox, Assistant Attorney General S. L. Nuchols, Special Assistant Attorney General, and William Lemke, representing the above named defendants, that the statement of the case herein consisting of the summons and complaint, order to show cause, affidavit and demand for change of venue demurrer and order sustaining demurrers; that all of the said original papers now on file with the Clerk of the District Court, Fourth Judicial District, Burleigh County, are all of the proceedings had and made a matter of record in the above case.

Be it further stipulated and agreed to by and between the parties herein that the Hon. W. L. Nuessle, one of the judges of the District Court, Fourth Judicial District, before whom the argument on the demurrers was heard and who made his order sustaining the demurrers do certify that the statement of the case consisting of all of the papers herein stated and the proceedings had thereon are a cor-

rect transcript of all the proceedings had and made a matter of record; that he also issued certificate certifying the said original papers in the said case.

8 Dated this 13th day of December, A. D. 1919.

HARRY LASHKOWITZ,
Attorney for Plaintiff.
WM. LEMKE,
Att'y for Lynn J. Frazier & John N. Hagen.
WILLIAM LANGER.

[Endorsed.]

Filed in District Court, Burleigh County, North Dakota, Dec. 16th, A. D. 1919.

CHAS. FISHER,
Clerk.
By EMMA J. FISHER,
Deputy.

9 In District Court, First Judicial District.

STATE OF NORTH DAKOTA,
County of Cass:

E. A. GREEN, N. W. VOIGT, M. N. CHRISTIANSON, and F. V. WOODWORTH, Plaintiffs,

vs.

LYNN J. FRAZIER, Governor; WILLIAM LANGER, Attorney General; John N. Hagen, Commissioner of Agriculture and Labor, and Obert Olson, Treasurer of the State of North Dakota, Defendants.

Clerk's Certificate on Change of Venue.

I, R. F. Croal, Clerk of the District Court, within the First Judicial District, for the County of Cass, State of North Dakota, do hereby certify, That the following named and hereunto attached papers to wit: Summons, Complaint, Demurrer, Order to Show Cause, Demand for Change of Place of Trial, Affidavit of Albert E. Sheets, Jr., and Order Changing Place of Trial, are all of the files, pleading and process, on file or of record, in the above entitled action, in this office, and that the same are hereby transmitted to the Clerk of the District Court of the County of Burleigh, within the Fourth Judicial District of the State of North Dakota, pursuant to the Demand and Order Changing place of trial attached hereto.

In testimony whereof, I have hereunto set my hand and affixed the seal of the above entitled court, at the city of Fargo, Cass County, North Dakota, this 18th day of November, 1919.

[Cass County District Court Seal.]

(Signed) R. F. CROAL.
R. F. CROAL,
Clerk of the District Court.

[Endorsed.]

Filed in District Court, Burleigh County, North Dakota, Nov. 19th, A. D. 1919. Chas. Fisher, by Emma J. Fisher, Deputy.

10 In District Court, First Judicial District.

STATE OF NORTH DAKOTA,
County of Cass, ss:

E. A. GREEN, N. W. VOIGT, N. M. CHRISTENSEN and F. D. WOODWORTH, Plaintiffs,

vs.

LYNN J. FRAZIER, Governor; WM. LANGER, Attorney General; JOHN N. Hagen, Commissioner of Agriculture and Labor, and Obert Olson, Treasurer of the State of North Dakota, Defendants.

Summons.

The State of North Dakota to the above named Defendants:

You are hereby summoned to answer to the complaint in the above entitled action and to serve a copy of your answer upon the subscriber at his office, in the City of Fargo, in said County and State, within thirty days after the service of this summons upon you, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated this 6th day of September, A. D. 1919.

HARRY LASHKOWITZ,
Attorney for Plaintiff, 11-17 *Stern Bldg., Fargo, N. Dak.*

[Endorsed:]

Filed in District Court, Cass County, North Dakota, Nov. 15, A. D. 1919.

R. F. CROAL,
Clerk.
By A. M. HURLEY,
Deputy.

Filed in District Court, Burleigh County, North Dakota, Nov. 19, A. D. 1919.

CHAS. FISHER,
Clerk.
By EMMA J. FISHER,
Deputy.

11 In District Court, First Judicial District.

STATE OF NORTH DAKOTA,
County of Cass, ss:

E. A. GREEN, N. W. VOIGT, N. M. CHRISTENSEN and F. D. WOODWORTH, Plaintiffs,

vs.

LYNN J. FRAZIER, Governor; WM. LANGER, Attorney General; JOHN N. Hogen, Commissioner of Agriculture and Labor, and Obert Olson, Treasurer of the State of North Dakota, Defendants.

Complaint.

Plaintiff complains and alleges as follows:

I.

That said plaintiffs are citizens of the State of North Dakota, residing in Burleigh County, and each is a taxpayer of the said State, and brings this action as such.

II.

That the said defendants are duly qualified and acting officers of the State of North Dakota, to wit: Lynn J. Frazier, Governor, John N. Hagen, commissioner of Agriculture and Labor, William Langer, Attorney General and Obert Olson, State Treasurer.

III.

That Obert Olson as State Treasurer is the custodian of the State's funds derived from taxation, and is also custodian of the State school fund, and disburses such school fund upon warrants drawn by the State auditor.

IV.

12 That under the pretended authority of the House Bill No. 17, passed by the Sixteenth Legislative Assembly of the State of North Dakota, which in form took effect on February 25th, 1919, the defendants Lynn J. Frazier, as Governor, William Langer as Attorney General, John N. Hagan as Commissioner of Agriculture

and Labor, claim and pretend to constitute the Industrial Commission of North Dakota, and have organized, and are now acting as such Commission.

V.

That the defendants, assuming and claiming to act as officers of the State, and in an official capacity, and under the pretended authority of certain pretended acts of the Sixteenth Legislative Assembly of North Dakota, which in form took effect on the 25th day of February, 1919, all of which are hereinafter specifically referred to, threaten to divert, pay out and transfer, and unless restrained and enjoined by this court, will pay out, divert and transfer from the general funds of the State, and from funds of the cities, villages, townships, and school districts of the State derived from taxation, large sums of money in the purchase of the bonds herein referred to and for other unlawful purposes; and threaten to create an issue, and unless restrained and enjoined by this court, will create and issue, obligations of the State in the form of state bonds, aggregating in amount the sum of $17,000,000 for unlawful purposes, and threaten to negotiate and sell, and unless restrained and enjoined by this court will negotiate and sell said bonds, and will pledge the faith and credit of the State of North Dakota for the payment thereof.

VI.

The defendants justify the acts of which complaint is made
13 in this action by the following duly enacted acts of the Sixteenth Legislative Assembly, to-wit:

House Bill 17, The Industrial Commission Act.
House Bill 18, Bank of North Dakota Act.
Snate Bil 75, The Mill and Elevator Association Act.
Senate Bill 130, Bank of North Dakota Real Estate Act.
Senate Bill 20, The Mill and Elevator Association Act.
Senate Bill 75, The Mill and Elevator Association Bond Act.
Senate Bill 19, The Home Building Act.

VII.

That the defendants, Lynn J. Frazier, William Langer, and John M. Hagan, officers of the State of North Dakota as aforesaid, constitute the Industrial Commission and under the provisions and authority of the said Industrial Commission Act, have organized as, and now claim to be a lawfully organized body under the name of "The Industrial Commission of North Dakota." That said Commission and said persons acting and claiming to act as such Industrial Commission as aforesaid, unless enjoined and restrained by order and judgment of this court, will expend large sums of money of the State of North Dakota, being funds and moneys raised by taxation against the people and property of the State of North Dakota to wit: In excess of the sum of $400,000.00 and that such expenditures

have already commenced and will continue until the appropriations available therefor have been expended. That such expenditures generally will be made on account of and for the following purposes:

That said Commission and the members thereof as aforesaid, have employed a secretary of the said Commission at a salary of $3,600 per annum, and are threatening to, and will engage in and undertake all of the different enterprises and business projects specially provided for under the said acts of the legislature hereinbefore set forth, and have commenced the organization of the said special businesses so referred to in the acts of the legislature hereinbefore set forth, and will expend the full amount of the appropriation provided in said Industrial Commission Act, to wit: more than the sum of $200,000.00.

That the said Industrial Commission and the members thereof as aforesaid, have organized the Bank of North Dakota, as provided for in the Bank of North Dakota Act, and have employed a manager and other officers and clerks for the operation of said bank and unless restrained and enjoined by this court, will continue in the operation of said bank without interruption until the full sum of the appropriation provided for in said Act, to wit $100,000.00 is fully expended.

That the said Industrial Commission and the members thereof as aforesaid, unless restrained and enjoined therefrom by the order and judgment of this Court, will proceed immediately to carry out the provisions of the Bank of North Dakota Bond Act, as hereinbefore set forth, and in so carrying out said provisions, will expend the full sum of the appropriation provided for in said Act, to wit, the sum of $10,000.00.

That the said Industrial Commission and the members thereof as aforesaid, unless restrained and enjoined therefrom by the order and judgment of this Court, will proceed immediately to carry out the provisions of the Bank of North Dakota Real Estate Bond Act, as hereinbefore set forth, and in so carrying out said provisions, will expend the full sum of the appropriation provided for in said Act, to wit, the sum of $10,000.00.

That the said Industrial Commission and the members thereof as aforesaid, have begun proceedings to establish a system of warehouses, elevators, flour mills, factories, plants, etc., within and without the State of North Dakota, and have employed a manager for the operation and carrying on of said warehouses, elevators, flour mills, factories, etc., at great expense to the State of North Dakota, and unless restrained by this Court will acquire property within the State of North Dakota for the purpose of establishing such enterprises as aforesaid, and as described and set forth in the Mill and Elevator Association Act as hereinbefore recited, by purchase or by virtue of the law of eminent domain, and at great expense to the State of North Dakota, and enter upon the business of manufacture, storage, sale, exchange, and other methods of acquiring and disposing of all kinds of manufactured and raw farm and food products, and by-products, and will do all other acts and things authorized or attempted to be authorized in and by the

provisions of said Mill and Elevator Association Act, and in the doing thereof, will expend the full amount of the appropriation provided for in said Act, which said appropriation amounts to the sum of more than $100,000.00.

That the said Industrial Commission and the members thereof as aforesaid, unless restrained and enjoined therefrom by the order and judgment of this Court, will proceed immediately to carry out the provisions of the North Dakota Mill and Elevator Association Bond Act, as hereinbefore set forth, and in so carrying out said provisions, will expend the full sum of the appropriation provided for in said Act, to wit the sum of $10,000.00.

That the said Industrial Commission and the members thereof as aforesaid have employed a manager for operating the Home Building Association, as provided in the Home Building Act, and, unless restrained and enjoined therefrom by the order and judgment of this Court, will proceed immediately to carry out the provisions of said Home Building Act, as hereinbefore set forth, and in so carrying out said provisions, will expend the full sum of the appropriation provided for in said Act, to wit: the sum of $100,000.00.

16 That if the defendants herein named are permitted to use the public funds of the State of North Dakota as threatened and herein set forth, a deficit of public moneys and funds required for the purpose of meeting the expenses of the state government will be created, amounting to the sum of appropriations aforesaid, to wit: $400,000.00, and that in the event of such deficit, the same would have to be restored by taxation upon the property of the plaintiff and the other taxpayers, of the State.

VIII.

That the said defendant, Obert Olson, as State Treasurer aforesaid, and said defendant Lynn J. Frazier as Governor, have prepared for issue, and have executed and issued negotiable bonds of the State of North Dakota in the aggregate amount of two million dollars under the pretended authority of the Bank of North Dakota Bond Act, as hereinbefore set forth, which said bonds are and will be known and designated as Bonds of North Dakota, Bank Series, and thereupon said bonds have been delivered to the Industrial Commission hereinbefore referred to, and unless enjoined and restrained by this Court, the said Commission, and the members thereof as hereinbefore designated and referred to, will negotiate and sell said bonds, thereby creating a liability against the State of North Dakota in the sum of two million dollars, which said liability can only be met and liquidated by moneys raised by taxation against the people and property of the State of North Dakota, and which moneys thus raised and said liability thus created will be for a private business enterprise, and contrary to and in violation of the rights of this plaintiff and all other taxpayers in the State of North Dakota, and in violation of the fundamental principles of a republican form of government and the Constitution of the United States.

17 That the said defendants above named, and in this paragraph referred to, unless enjoined and restrained by the order and judgment of this court, will in the same manner as herein set forth, execute, issue and certify bonds of the State of North Dakota under the provisions of the Bank of North Dakota Real Estate Bond Act hereinbefore set forth, in the aggregate amount of ten million dollars, to be known as Bonds of North Dakota, Real Estate Series, and thereupon said bonds will be delivered to the Industrial Commission hereinbefore referred to, and will be by said Commission and the members thereof, as hereinbefore designated and referred to, negotiated and sold.

That the said defendants, above named, and in this paragraph referred to, unless enjoined and restrained by the order and judgment of this court, will in the same manner as herein set forth, execute, issue and certify bonds of the State of North Dakota under the provisions of the Mill and Elevator Association Bond Act hereinbefore set forth, in the aggregate amount of five million dollars, to be known as Bonds of North Dakota, Mill and Elevator Series, and thereupon said bonds will be delivered to the Industrial Commission hereinbefore referred to, and will be by said Commission and the members thereof as hereinbefore designated and referred to, negotiated and sold.

That the bonds aforesaid will constitute a liability against the State of North Dakota in the aggregate sum of Seventeen Million Dollars, which said liability can only be met and liquidated by moneys raised by taxation against the people and property of the State of North Dakota, and which moneys thus raised, and said liability thus created, will be for private business enterprises, and in violation of the State of North Dakota, and of the fundamental principles of a republican form of government and the Constitution of the United States.

18 IX.

That the bonds authorized by the acts of the Sixteenth Legislative Assembly, referred to herein, would be invalid, for the following reasons:

(*a*) Because issued for private business, and not for public purposes;

(*b*) For the reason that they would violate the constitution of the State of North Dakota in this: That no sufficient provision is made in said acts for a sinking fund to meet and pay the principal of the bonds to be issued under said acts, as required by Section 182 of the state constitution;

(*c*) For the reason that the legislature did not exercise its function of fixing the amounts, denominations, maturities and rate of interest on said bonds, but on the contrary attempted to delegate the legislative function of fixing and determining the same to the discretion of the Governor and the Industrial Commission.

X.

That the purpose of the proposed expenditure of public funds and the creation of public debts of which plaintiff complains, is not a public or a governmental purpose, but is a private or business purpose, and is for the purpose of financial profit and gain for those who are interested in the various industries and enterprises and business projects proposed to be installed. That such enterprises do not rest upon the public health or welfare of the people of the State, or any other governmental reason which would justify the proposed expenditures or the creation of the proposed debts or in any manner come within the taxing or police power of the State.

XI.

That if the State of North Dakota is permitted to engage in the various enterprises, industries and projects hereinbefore referred to, the plaintiffs will suffer irreparable injury and damage. That the plaintiffs will be denied the equal protection of the law, and
19 will be deprived of their property without due process of law, all in violation of their rights as citizens of a free government, and in violation of the guaranties of the Constitution of the United States, and of the Constitution of North Dakota. That these plaintiffs have no adequate remedy at law in the premises.

XII.

The acts of the legislature hereinbefore set forth authorize the defendants in the operation and conduct of the various enterprises provided for in said acts, to incur and create obligations and indebtedness, in addition to the obligations and indebtedness hereinbefore specifically referred to, amounting to millions of dollars, for which indebtedness and obligations the State of North Dakota stands guarantor and for the payment and liquidation of which the property of the plaintiffs and the other taxpayers of the State of North Dakota may be appropriated.

Wherefore the plaintiffs pray judgment against the defendants and each of them.

1. That the said defendant Obert Olson, individually and as State Treasurer of the State of North Dakota, be forever enjoined and prohibited by the order, judgment and decree of this court, from negotiating or selling any of the bonds of the State of North Dakota attempted to be, pretended to be, or authorized by House Bill No. 49, and from preparing or issuing any bonds pretended to be authorized by Senate Bill No. 130 or Senate Bill No. 75, hereinbefore referred to; and that the said Lynn J. Frazier individually and as Governor of the State of North Dakota, and the said Obert Olson individually and as Treasurer of the State of North Dakota, be forever enjoined and prohibited from executing any of the said bonds, not now executed, so attempted to be, pretended to be, or authorized to be issued

by either of said legislative acts herein, and in this paragraph of the prayer referred to; and that said defendants individually and as officers aforesaid, each and all be forever enjoined and pro-
20 hibited by the order, judgment and decree of this court, from delivering any bonds, not now delivered, so pretended to be or authorized under the provisions of House Bill 17 aforesaid; and that the said Lynn J. Frazier, Governor of the State of North Dakota, William Langer, Attorney General, John N. Hagan, Commissioner of Agriculture and Labor of the said State, individually and in their official capacity, and as members of the Industrial Commission aforesaid, be forever enjoined and prohibited from negotiating, selling, or otherwise disposing of any bond or bonds issued under the provisions of any said act of the Sixteenth Legislative Assembly of the State of North Dakota as hereinbefore set forth, being House Bill No. 18, House Bill No. 49, and Senate Bill No. 75, hereinbefore more particularly referred to.

2. That each of said defendants be forever restrained and enjoined from preforming any of the acts which any of the laws above mentioned require or permit them to do.

3. That plaintiff have such other and further relief in the premises as may be just and proper.

HARRY LASHKOWITZ,
Attorney for Plaintiff,
11-17 *Stern Bldg., Fargo, N. Dak.*

21 STATE OF NORTH DAKOTA,
County of Burleigh, ss:

H. W. Voigt, being duly sworn according to law on his oath deposes and says that he is one of the plaintiffs in the above entitled action; that he has read the above complaint and knows the contents thereof and that the same is true, except as to those matters stated on information and belief and as to those matters he believes it to be true.

H. W. VOIGHT.

Sworn and subscribed to before me this September 6, 1919.
EDWARD S. ALLEN,
Notary Public, North Dakota.

My Commission expires April 6, 1924.

21½ [Endorsed:]

Due and personal service of the within Summons, Complaint and order to show cause is hereby admitted this 14th day of Nov., 1919, at Bismarck, N. D.

WILLIAM LANGER,
Attorney for Defendants.

Filed in District Court, Cass County, North Dakota, Nov. 15, A. D. 1919.

R. F. CROAL,
Clerk,
By A. M. HURLEY,
Deputy.

Filed in District Court, Burleigh County, North Dakota, Nov. 19, A. D. 1919.

CHAS. FISHER,
Clerk,
By EMMA J. FISHER,
Deputy.

22 STATE OF NORTH DAKOTA,
County of Cass:

In the District Court, First Judicial District.

E. A. GREEN, H. W. VOIGT, M. N. CHRISTENSEN and F. W. WOODWORTH, Plaintiffs,

vs.

LYNN J. FRAZIER, Governor; WILLIAM LANGER, Attorney General; JOHN N. HAGAN, Commissioner of Agriculture and Labor; OBERT OLSEN, Treasurer, of the State of North Dakota, and the Industrial Commission of North Dakota, Defendants.

Demurrer.

Now comes the defendants, Lynn J. Frazier, Governor, John N. Hagan, Commissioner of Agriculture and Labor, and the Industrial Commission of North Dakota, and demur to the complaint herein on the ground:

1.

That the complaint does not state facts sufficient to constitute a cause of action against the defendants or either of them.

2.

That the Court has no jurisdiction of the persons, or of the subject of the action.

Dated this 15th day of November, 1919.

WM. LEMKE,
Attorney for the Defendants, Lynn J. Frazier, Governor; John N. Hagan, Commissioner of Agriculture and Labor, and the Industrial Commission of North Dakota.

[Endorsed:]

Personal service by copy of within admitted this 15th day of Nov 1919.

HARRY LASHKOWITZ,
Attorney for Plaintiffs.

Filed in District Court, Cass County, North Dakota, Nov. 1 A. D. 1919.

R. F. CROAL,
Clerk,
By A. M. HURLEY,
Deputy.

Filed in District Court, Burleigh County, North Dakota, Nov. 1 A. D. 1919.

CHAS. FISHER,
Clerk,
By EMMA J. FISHER,
Deputy.

23 STATE OF NORTH DAKOTA,
County of Cass, ss:

In District Court, First Judicial District.

E. A. GREEN, H. W. VOIGT, M. N. CHRISTENSEN and F. V WOODWORTH, Plaintiffs,

vs.

LYNN J. FRAZIER, Governor; WILLIAM LANGER, Attorney Genera JOHN N. HAGEN, Commissioner of Agriculture and Labor, an OBERT OLSON, Treasurer, Defendants.

Order to Show Cause.

Whereas it has been presented to this court by the verified com plaint of the plaintiffs in the above entitled action, that you, th above named defendants, are about to take action and act upon an under, the following acts of the Sixteenth Legislative Assembly, wit:

House Bill 17, The Industrial Commission Act.
House Bill 18, Bank of North Dakota Act.
House Bill 49, Bank of North Dakota Act.
Senate Bill 130 Bank of North Dakota Real Estate Act.
Senate Bill 20, The Mill and Elevator Association Act.
Senate Bill 75, The Mill and Elevator Association Bond Act.
Senate Bill 19, Home Building Act.

And that there is no plain, speedy, and adequate remedy in th ordinary course of the law.

COPY BOUND CLOSE

Wherefore, you, the said above named defendants, and each of you, are hereby commanded to show cause before this Court at the Court House in the Court Rooms thereof in the City of Fargo, County of Cass, and State of North Dakota, on the 18th day of November, A. D. 1919, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why a restraining order and injunction should not be issued by this Court restraining you, and each of you from negotiating or selling any of the bonds of the State of North Dakota, to be, pretended to be, or authorized by House Bill No. 49, and from preparing or issuing any bonds pretended to be authorized by Senate Bil- No. 130 or Senate Bill No. 75; and that the said Lynn J. Frazier, individually and as Governor of the State of North Dakota, and the said Obert Olson individually and as Treasurer of the State of North Dakota, be forever enjoined and prohibited from executing any of the said bonds, not now executed, so attempted to be, pretended to be, or authorized to be issued by either of said legislative acts; and that said defendants individually and as officers aforesaid, each and all be forever enjoined and prohibited by the order, judgment and decree of this court, from delivering any bonds, not now delivered, so pretended to be, or authorized under the provisions of House Bill 17 aforesaid; and that the said Lynn J. Frazier, Governor of the State of North Dakota, William Langer, Attorney General, John N. Hagan, Commissioner of Agriculture and Labor, individually and in their official capacity, and as members of the Industrial Commission aforesaid, be forever enjoined and prohibited from negotiating, selling or otherwise disposing of any bonds issued under the provisions of any of said acts of the Sixteenth Legislative Assembly of the State of North Dakota, being House Bill No. 18, House Bill No. 49, and Senate Bill No. 75, and all and each of said defendants be forever restrained and enjoined from performing any of the acts which any of the laws above mentioned require or permit them to do.

Let service of this order and of the complaint herein be made upon the defendants personally on November 14th, 1919.

Dated at Fargo, North Dakota, this 13th day of November, 1919.

By the Court:

A. T. COLE,
Judge of the District Court, 1st Judicial Dist., Cass County, N. Dak.

[Endorsed:]

Due and personal service of the within order to show cause is hereby admitted this 14th day of November, A. D. 1919, at Bismarck, N. D.

WILLIAM LANGER,
Attorney for Defendant.

IN CENTER

Filed in District Court, Cass County, North Dakota, Nov. 15 A. D. 1919.

R. F. CROAL,
Clerk.
By A. M. HURLEY,
Deputy.

Filed in District Court, Burleigh County, North Dakota, Nov. 19 A. D. 1919.

CHAS. FISHER,
Clerk.
By EMMA J. FISHER,
Deputy.

25 STATE OF NORTH DAKOTA,
County of Cass, ss:

In District Court, First Judicial District.

E. A. GREEN, N. W. VOIGT, M. N. CHRISTENSEN and F. W. WOODWORTH, Plaintiffs,

vs.

LYNN J. FRAZIER, Governor; WILLIAM LANGER, Attorney General; JOHN N. HAGEN, Commissioner of Agriculture and Labor; and OBERT OLSEN, Treasurer, of the State of North Dakota, Defendants.

Demand for Change of the Place of Trial.

Come now the defendants and hereby demand that the place of trial of the above-entitled action be changed from the County of Cass in the First Judicial District, to the County of Burleigh, in the Fourth Judicial District; that this demand is made under the provisions of Subdivision Two of Section 7416, Compiled Laws of 1913.

Dated this 18th day of November, 1919.

WILLIAM LANGER,
Attorney General.
ALBERT E. SHEETS, Jr.,
Assistant Attorney General.
W. S. LAUDER,
Counsel for Defendants.

[Endorsed:]

Service admitted this 18th day of Nov., 1919.
HARRY LASHKOWITZ,

Filed with the Court Nov. 18, 1919.

A. T. COLE,
Judge.

Filed in District Court, Cass County, North Dakota, Nov. 18, A. D. 1919.

R. T. CROAL,
Clerk,
By A. M. HURLEY,
Deputy.

Filed in District Court, Burleigh County, North Dakota, Nov. 19, A. D. 1919.

CHAS. FISHER,
Clerk,
By EMMA J. FISHER,

26 STATE OF NORTH DAKOTA,
County of Cass, ss:

In District Court, First Judicial District.

E. A. GREEN, N. W. VOIGT, M. N. CHRISTENSEN and F. D. WOODWORTH, Plaintiffs,

vs.

LYNN J. FRAZIER, Governor; WILLIAM LANGER, Attorney General; John N. Hagen, Commissioner of Agriculture and Labor; and Obert Olsen, Treasurer, of the State of North Dakota, Defendants.

Affidavit.

STATE OF NORTH DAKOTA,
County of Cass, ss:

Albert E. Sheets, Jr., being duly sworn on his oath, deposes and says: That he is Assistant Attorney General of the State of North Dakota and is one of the attorneys for the defendants in the above-entitled action; that he has read the complaint herein and knows the contents thereof, and that the defendants are state officers, having offices in the Capitol at the City of Bismarck in Burleigh County, N. D.; that the acts which in the complaint plaintiffs allege the defendants have committed, or are about to commit, have all been committed in the Capitol building in the said City of Bismarck, and that the acts which in said complaint the defendants are about to commit will, if committed at all, be committed in their respective offices in the Capitol building at the said City of Bismarck, and that if plaintiffs have any cause of action, as set forth in their complaint, the said cause of action arose in said County of Burleigh in the State of North Dakota and not in the County of Cass in said state.

That none of said defendants reside within the said County of Cass and that none of the acts as set forth in the complaint herein, were committed within the said County of Cass.

The complaint in this action is hereby referred to and
27 made part of this affidavit as fully as though the same were herein set out in full.

Wherefore, and in consideration of the premises, affiant asks that an Order be made herein changing the place of trial from the County of Cass, North Dakota, to the County of Burleigh, North Dakota.

ALBERT E. SHEETS, JR.

Subscribed and sworn to before me this 18th day of Nov. 1919.
[SEAL.] WM. C. GREEN,
Notary Public, Cass Co., North Dakota.

My commission expires, July 14, 1922.

[Endorsed.]

Service admitted this 18th day of Nov. 1919.
HARRY LASHKOWITZ,
Att'y for Plaintiffs.

Filed with the Court, Nov. 18, 1919.
A. T. COLE,
Judge.

Filed in District Court, Cass County, North Dakota. Nov. 18, A. D. 1919.
R. F. CROAL,
Clerk,
By A. M. HURLEY,
Deputy.

Filed in District Court, Burleigh County, North Dakota. Nov. 19, A. D. 1919.
CHAS. FISHER,
By EMMA J. FISHER.

28 STATE OF NORTH DAKOTA,
County of Cass, ss:

In District Court, First Judicial District.

E. A. GREEN, N. W. VOIGT, M. N. CHRISTENSEN and F. D. WOOLWORTH, Plaintiffs,

vs.

LYNN J. FRAZIER, Governor; WILLIAM LANGER, Attorney General; John N. Hagen, Commissioner of Agriculture and Labor; and Obert Olson, Treasurer of the State of North Dakota, Defendants.

Order for Change in Place of Trial.

The above entitled matter having come on for hearing and Harry Lashkowitz appearing for the plaintiffs, and W. S. Lauder and

Albert E. Sheets, Jr., Assistant Attorney General appearing for the defendants, and Wm. Lemke appearing for Lynn J. Frazier and John N. Hagen and for the Industrial Commission; and return to Order to Show Cause having been made by the defendants by filing and serving a Demand for Change of Venue; after hearing had and arguments heard and a consideration of the papers and pleadings filed by the parties to the action,

It is ordered, adjudged and decreed, that the motion for a change in the place of trial made by the defendants be granted, and a change of venue from the County of Cass, State of North Dakota, in the above entitled action, be had as to all further proceedings and said proceedings in said action are ordered changed to the District Court of Burleigh County in the Fourth Judicial District, and the Clerk of the District Court of Cass County is ordered to forthwith transmit all papers, files and documents in said action, now on file in his office, to the Clerk of the District Court of Burleigh County, North Dakota, and that all subsequent pleadings, papers and documents be entitled in the District Court of Burleigh County, North Dakota.

Dated this 18th day of November, 1919.

A. T. COLE,
Judge of First Judicial District,
State of North Dakota.

[Endorsed.]

Due and personal service of within order for change of place of trial this 18th day of Nov., 1919.

HARRY LASHKOWITZ,
Attorney for Pf.

Filed in District Court, Burleigh County, North Dakota, Nov. 19, A. D. 1919.

CHAS. FISHER,
Clerk,
By EMMA J. FISHER,
Deputy.

29 STATE OF NORTH DAKOTA,
County of Cass, ss:

In District Court, Fourth Judicial District.

Before W. L. Nuessle, Judge.

E. A. GREEN, H. W. VOIGT, N. M. CHRISTENSEN and F. D. WOODWORTH, Plaintiffs,

vs.

LYNN F. FRAZIER, Governor; WILLIAM LANGER, Attorney General; John N. Hagen, Commissioner of Agriculture & Labor; Obert Olson, Treasurer of the State of North Dakota, and the Industrial Commission of North Dakota, Defendants.

Motion to Fix Date of Hearing on Order to Show Cause.

Now come the defendants, Lynn J. Frazier, Governor; John N. Hagen, Commissioner of Agriculture & Labor and the Industrial Commission of North Dakota through their attorney William Lemke, and move this Honorable Court that the hearing on the motion to show cause in the above entitled action be noted and brought on for hearing at 2 o'clock p. m. Tuesday, February 25, 1919, or as soon thereafter as counsel can be heard. This motion is made upon all the pleadings in the case.

WM. LEMKE.
Attorney for Defendants Lynn J. Frazier, John N. Hagan and the Industrial Commission of North Dakota.

[Endorsed.]

Filed in District Court, Burleigh County, North Dakota, Nov. 21st, A. D. 1919.

CHAS. FISHER,
Clerk.

STATE OF NORTH DAKOTA,
County of Cass, ss:

In District Court, Fourth Judicial District.

E. A. GREEN, H. W. VOIGT, N. N. CHRISTENSEN and F. D. WOODWORTH, Plaintiffs,

vs.

LYNN J. FRAZIER, Governor; WILLIAM LANGER, Attorney General; John N. Hagan, Commissioner of Agriculture & Labor; Obert Olson, Treasurer of the State of North Dakota, and The Industrial Commission of North Dakota, Defendants.

Order Fixing Date on Order to Show Cause.

Upon motion of William Lemke, Attorney for Defendants, Lynn J. Frazier, Governor; John N. Hagan, Commissioner of Agriculture & Labor and the Industrial Commission of North Dakota; it is hereby ordered that the hearing on the order to show cause in the above entitled action be heard before this court at 2 o'clock p. m., Tuesday, November 25, 1919; that a copy of this order be served forthwith upon the Attorney General or any of his assistants in his office, and upon Harry Laskowitz attorney for plf.

Dated 11/21/19.

By the Court,

W. L. NUESSLE,
Judge, Fourth Judicial District.

[Endorsed.]

Filed in District Court, Burleigh County, North Dakota, Nov. 21st, A. D. 1919.

CHAS. FISHER,
Clerk.

31 Copy.

STATE OF NORTH DAKOTA,
County of Burleigh:

In District Court, Fourth Judicial District.

E. A. GREEN, H. W. VOIGT, M. N. CHRISTENSEN and F. V. WOODWORTH, Plaintiffs,

vs.

LYNN J. FRASIER, Governor; WM. LANGER, Attorney General; John N. Hagen, Commissioner of Agriculture and Labor, and Obert Olson, Treasurer, Defendants.

Demurrer.

Comes now Lynn J. Frazier, as Governor, William Langer, as Attorney General, John N. Hagen, as Commissioner of Agriculture and Labor, and Obert Olson, as Treasurer of the State of North Dakota, and William Langer and Obert Olson individually, and demur to the plaintiffs' complaint herein upon the following grounds:

I.

That there is a defect of parties defendant.

II.

That the complaint herein does not state facts sufficient to constitute a cause of action, or to entitle the plaintiffs to the relief prayed for therein.

Dated at Bismarck, November 24, 1919.

WILLIAM LANGER,
Attorney General;
EDW. B. COX,
ALBERT E. SHEETS, JR.,
Ass't Attorney General.

Of Counsel:
S. L. NUCHOLS.
W. S. LAUDER.

[Endorsed.]

Service admitted this 25th day of November, 1919. Harry Lashkowitz, Atty. for Plaintiffs.

Filed in District Court, Burleigh County, North Dakota. Dec. 1st, A. D. 1919.

CHAS. FISHER,
Clerk,
By EMMA J. FISHER,
Deputy.

2 STATE OF NORTH DAKOTA,
County of Burleigh:

In District Court, Fourth Judicial District.

E. A. GREEN, H. W. VOIGT, M. N. CHRISTENSEN and F. V. WOODWORTH, Plaintiffs,

vs.

LYNN J. FRAZIER, Governor; WM. LANGER, Attorney General; John N. Hagen, Commissioner of Agriculture and Labor, and Obert Olson, Treasurer, Defendants.

Order.

The above entitled matter having come before this court for determination on the 25th day of November, 1919, and motion having been made allowing the plaintiff to amend the title of the complaint and order to show cause herein so as to include the State Industrial Commission as a party defendant, and the case having been presented to the court on behalf of the plaintiff by Harry Lashkowitz, and on behalf of the various defendants by Edw. B. Cox, Assistant Attorney General, S. L. Nuchols, Special Assistant Attorney General and William Lemke of Fargo, North Dakota, and the issues therein having been raised by demurrers on the part of the defendants to the plaintiff's complaint, and the court being fully advised in the premises.

Now therefore, It is ordered by this court that the demurrer of the defendants to the complaint herein be, and it is, hereby sustained.

Dated this 26th day of November, 1919.

W. L. NUESSLE,
District Judge, Fourth Judicial District.

[Endorsed:] Personal service of the within order sustaining demurrer by copy thereof admitted at Fargo, North Dakota, this 28th day of November, 1919. Harry Las-kowitz, Attorney for Plaintiffs, Fargo, North Dakota.

Filed in District Court, Burleigh County, North Dakota, Dec. 1st, A. D. 1919.

CHAS. FISHER,
By EMMA J. FISHER,
Deputy.

33 In District Court, Fourth Judicial District.

STATE OF NORTH DAKOTA,
County of Burleigh:

E. A. GREEN, H. W. VOIGHT, N. M. CHRISTENSEN, and F. D. WOODWORTH, Plaintiffs,

vs.

LYNN J. FRAZIER, Governor; WM. LANGER, Attorney General; JOHN N. Hagan, Commissioner of Agriculture and Labor, and Obert Olson, Treasurer, of the State of North Dakota, and the Industrial Commission of North Dakota, Defendants.

Clerk's Certificate on Appeal.

STATE OF NORTH DAKOTA,
County of Burleigh, ss:

I, Chas. Fisher, Clerk of the District Court within and for Burleigh County, in the Fourth Judicial District of the State of North Dakota, Do Hereby Certify, that the foregoing and annexed papers are the original Notice of Appeal and the Undertaking given thereon, Appellant's Specifications of Error and a Stipulation entered into by and between Counsel for the respective parties hereto; and the original papers and files in the above entitled action consisting of the following named papers, to-wit: Summons, Complaint, Demurrer, Order to Show Cause, Demand for Change of Place of Trial, Affidavit of Albert E. Sheets, Jr., Order Changing Place of Trial, Clerk's Certificate on Change of Venue, Motion to fix Date of Hearing on Order to Show Cause, Order Fixing Date on Order to Show Cause, Demurrer, Order Sustaining Demurrer and that the above and foregoing named papers are, embrace and include all of the original papers filed by the respective parties in the above entitled action, and the same are herewith transmitted to the Supreme Court of the State of North Dakota pursuant to said appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at Bismarck, North Dakota, this 16th day of December, 1919.

[Seal of the Court.]

CHAS. FISHER,
Clerk of the District Court.

[Stamped:] 3872. Filed in the office of the clerk of the Supreme Court, Dec. 17, 1917.

File No. 3872.

ATE OF NORTH DAKOTA,
In the Supreme Court, ss:

A. GREEN, H. W. VOIGHT, N. M. CHRISTENSEN, and F. D. WOODWORTH, Plaintiffs and Appellants,

vs.

NN J. FRAZIER, Governor; WM. LANGER, Attorney General; JOHN N. Hagan, Commissioner of Agriculture and Labor, and Obert Olson, Treasurer, of the State of North Dakota, and the Industrial Commission of North Dakota, Defendants and Respondents.

Appeal from the District Court of Burleigh County.

This action coming on to be heard at the December A. D. 1919 rm of this Court at the Supreme Court room, in the City of Bismark, ate of North Dakota:

Present: A. M. Christianson, Chief Justice; Luther E. Birdzell, ichard H. Grace, James E. Robinson and H. A. Bronson, Associate ustices, and the appeal herein having been argued by Harry Lashowitz for the Appellants and by Frederick A. Pike, S. L. Nuchols and . S. Lauder for Respondent and the court having advised thereon,, is now here considered, ordered and adjudged that the order judgent of the said District Court within and for said Burleigh County ppealed from herein, be and the same is hereby Affirmed and the ause ordered remanded forthwith.

And it is Further Ordered, That this cause be and it is hereby remanded to the District Court for further proceedings according to law, nd the order of this court.

And it is Further Considered and Adjudged, That Respondents ave and recover of the Appellants costs and disbursements on this ppeal expended, to be taxed and allowed in the District Court.

Dated Jan. 2, 1920.
By the Court.

A. M. CHRISTIANSON,
Chief Justice.

[Seal Supreme Court, State of North Dakota.]

Attest:
J. H. NEWTON,
Clerk.

[Endorsed:] File No. 3872. In the Supreme Court State of North Dakota. Green et al., Plaintiff- *and* vs. Frazier et al., Defendant- *and* Order for Judgment filed in District Court this 2nd day of January, 1920. J. H. Newton Clerk. Remittitur sent down 1/20 1920.

35 STATE OF NORTH DAKOTA:

In the Supreme Court.

E. A. GREEN, N. W. VOIGHT, N. M. CHRISTENSEN, and F. D. WOODWORTH, Plaintiffs and Appellants,

vs.

LYNN J. FRAZIER, Governor; WM. LANGER, Attorney General; JOHN N. Hagan, Commissioner of Agriculture and Labor; and Obert Olson, Treasurer, of the State of North Dakota, and the Industrial Commission of North Dakota, Defendants and Respondents.

Appeal from the District Court of Burleigh County.

Hon. W. L. Nuessle, J.

1. Where a proposed amendment to the constitution of the State of North Dakota is, at a regular or special election, duly submitted to the electors for their approval, and a majority of the qualified electors voting at such election, vote in favor of it and it is later duly submitted to the legislature and by it agreed to and duly ratified, and it is thereafter approved by the Governor of the state, it duly becomes a part of the Constitution of the State of North Dakota.

2. It is held, the amendment to Sec. 182 and to Sec. 185 of the Constitution of the State of North Dakota each were regularly lawfully, and in accordance with the provisions of the State Constitution relative to the amendment thereof, duly and legally adopted and are a part of the Constitution of the State of North Dakota.

3. It is held, that the people of this state have the privilege, right and authority under the principles and prerogative of self government to adopt such constitution and such amendments to it as to them may seem right and proper and best calculated to insure their general welfare, security and prosperity, subject however in this respect, to every limitation or restraint imposed upon them by
36 the Constitution of the United States.

4. It is held, that neither of the amendments in question, in any manner, contravene any of the provisions of the Constitution of the United States; nor are they repugnant to it, nor are any of the laws relative to the construction and ownership of certain state-owned industries and utilities, invalid, void or unconstitutional under the State Constitution; neither do they contravene any provision of the Constitution of the United States, nor are they within any of the restraints imposed by it upon the several states.

5. A private business or enterprise is one in which an individual or individuals, an association, co-partnership, or private corporation

have invested capital, time, attention, labor and intelligence for the purpose of creating and conducting such business, for the sole purpose that those who make such contributions may, from the conducting and operating of it, make, gain and acquire a financial profit, for their exclusive benefit, improvement and enjoyment, and exclusively for their own private purposes and use.

6. A public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division, as for example, a state, the sovereign powers of which are exercised to promote such public purposes or public business.

7. It is held, that the building, owning and operating of state-owned elevators, flouring mills and other state industries in question is for a public purpose as defined in paragraph six supra, it further appears that every resident and business in the state depends directly or indirectly upon the agricultural productions of the state for financial success and that approximately ninety per cent of the wealth of this state is produced from the farms therein and consists
37 mostly of small grains, and further that great losses have been, and still are, being suffered by the farmers in marketing such grain outside of the state, and that it is the purpose of such state owned industries to establish a stable and fair market for such products within the State of North Dakota where the producers of farm products within this state may receive the full market value of their products.

8. The building, owning and operating of such state owned industries and utilities being for a public purpose, and the profits from such inuring to all the people of the state, and are payable as such into the state treasury for the equal use and benefit of all the people of this state, it is held that such ownership and operation of such industries and utilities constitute a public purpose, to carry out which the state may issue bonds as prescribed by law and may levy a tax on all property of this state not exempt from taxation under the laws of this state or of the United States, for the purpose of paying the principal and interest of such bonds, and that in levying and collecting of such tax there is no violation of either the state constitution or the Constitution of the United States nor the 14th amendment.

9. It is further held, that the authorization of the Governor and Industrial Commission to fix the rate of interest, date of maturity, etc. of such bonds, is not the delegation of a legislative power or function, but merely the conferring of administrative duties upon them.

10. The constitutional amendments and laws in question promote home ownership. The state, as such, is made up of units. Those

units are represented by homes. The more homes, the more prosperous and secure they are, the more prosperous, secure and permanent is the state. The state, its integrity, morality, intelligence, prosperity and permanance is measured largely by the average of those same virtues in its citizenship, and those virtues are greatly promoted by permanency of home ownership, which the laws in
38 question are intended to establish.

(*Syllabus by the Court.*)

Appeal from the District Court of Burleigh County, Hon. W. L. Juessle, Judge.

From an order sustaining a demurrer to the complaint *if* plaintiffs appeal.

Order Affirmed.

Opinion of the Court by Grace, J.

Harry Lashkowitz, Fargo, N. D., Attorney for Plaintiffs and Appellants.

William Langer, Bismarck, North Dakota, Attorney of Defendants and Respondents.

William Lemke, Fargo, North Dakota, Attorney for Defendants and Respondents.

W. S. Lauder, Wahpeton, North Dakota, S. L. Nuchols, Mandan, North Dakota and Frederic A. Pike, St. Paul, Minnesota, of Counsel for Defendants and Respondents.

39 E. A. GREEN, N. W. VOIGHT, N. M. CHRISTIANSON, F. D. WOODWORTH, Plaintiffs and Appellants,

VS.

LYNN J. FRAZIER, Governor; WILLIAM LANGER, Attorney General; John N. Hagan, Commissioner of Agriculture and Labor, and Obert Olson, Treasurer, of the State of North Dakota, and the Industrial Commission of North Dakota, Defendants and Respondents.

Appeal from an Order of the District Court of Burleigh County, Sustaining a Demurrer to the Complaint. W. L. Nuessle, Judge.

GRACE, *J.*:

This action was commenced by the plaintiffs, in the County of Cass, to procure an injunction to restrain the defendants, each of whom is a State Officer of the State of North Dakota, from disbursing certain public funds, in the State Treasury, aggregating perhaps several hundred thousand dollars; and, further, to restrain the defendants from issuing certain state bonds, and to have declared invalid, null and void, certain amendments of the State Constitution, and certain statutes authorizing the disbursing of such money, and the execution, sale and delivery of such bonds. The venue of the action was changed by a proper order to the County of Burleigh,

The plaintiffs are tax-payers of this state, and, as such, bring this action. The decision in this case, in so far as it interprets the provisions of the constitution and laws of this state, will be binding upon, not only these tax-payers, but, all others of this state.

At a general election in this state, there were ten proposed constitutional amendments to the Constitution of the State of North Dakota, legally submitted to the electors for adoption or rejection. Each of them received a majority of the votes, cast at such election,
40 and thus they were duly adopted by the electors. They were, then, duly presented to the Legislature of the State of North Dakota, and, by resolution of the House of Representatives of the State of North Dakota, the Senate concurring, agreed to and declared a part of the Constitution of the state, and each of said amendments was duly adopted, and thus became effective as part of the Constitution of the State of North Dakota.

The Validity of two of such constitutional amendments is challenged by this action, and claimed, thereby, to be null and void.

Section 182 of the Constitution, prior to its amendment, is as follows: "The state may, to meet actual deficits or failure in the revenue, or in case of extraordinary emergencies, contract debts, but such debts shall never in the aggregate exceed the sum of $200,000, exclusive of what may be the debt of North Dakota at the time of the adoption of this Constitution.

Every such debt shall be authorized by law, for certain purposes to be definitely mentioned therein, and every such law shall provide for levying an annual tax, sufficient to pay the interest, semi-annually, and the principal within 30 years from the passage of such law, and shall specially appropriate the proceeds of such tax to the payment of said principal and interest, and such appropriation shall not be repealed, or the tax discontinued until such debt, both principal and interest, shall have been fully paid.

No debt, in excess of the limit named, shall be incurred, except for the purpose of repelling invasion, surpressing insurrection, defending the state in time of war, or to provide for public defense in case of threatened hostilities; but the issuing of new bonds to refund existing indebtedness shall not be construed to be any part or portion of said $200,000.

As amended, Section 182 is as follows: "The state may issue or guarantee the payment of bonds, providing that all
41 bonds in excess of $2,000,000, shall be secured by first mortgages upon real estate, in amounts not to exceed one-half of its value; or upon real and personal property of state owned utilities, enterprises or industries, in amounts not exceedings its value, and provided, further, that the state shall not issue or guarantee bonds upon property of state owned utilities, enterprises or industries in excess of $10,000,000.

No future indebtedness shall be incurred by the state, unless evidenced by bond issues, which shall be authorized by law, for certain purposes to be clearly defined.

Every law authorizing a bond issue shall provide for levying an annual tax, or may make other provisions, sufficient to pay the inter-

est, semi-annually, and the principal within 30 years from the passag
of such law, and shall specially appropriate the proceeds of such tax
or of such other provisions, to the payment of said principal an
interest, and such appropriation shall not be repealed, or the tax o
other provisions discontinued until such debt, both principal an
interest, shall have been paid.

No debt, in excess of the limit named herein, shall be incurred
except for the purpose of repelling invasion, suppressing insurre
tion, defending the state in time of war, or to provide for the publi
defense in case of threatened hostilities."

Section 185 of the Constitution, before its amendment, is as fol
lows: "Neither the state, nor any county, city, township, town, schoo
district, or any other political subdivision shall loan or give it
credit, or make donations to, or in aid of, any individual, associatio
or corporation, except for necessary support of the poor, or subscrib
to or become the owner of the capital stock of any association o
corporation, nor shall the state engage in any work or interna
improvement, unless authorized by two-thirds vote of th
42 people."

As amended, the section is as follows: "The state, an
county or city, may make internal improvements, and may engag
in any industry, enterprise, or business, not prohibited by Article 2
of the Constitution, but neither the state nor any political subdivi
sion thereof, shall otherwise loan or give its credit, or make donatio
to, or in aid of, any individual, association or corporation, except fo
reasonable support of the poor, nor subscribe to or become the owne
of capital stock in any association or corporation."

The specific laws claimed by the plaintiff to be unconstitutional
void and of no effect, and which were enacted by the 16th Legis
lative Assembly, are as follows:

House Bill 17, The Industrial Commission Act; House Bill 18
Bank of North Dakota Act; House Bill 49, Bank of North Dakot
Bond Act; Senate Bill 130, Bank of North Dakota, Real Estate Act
Senate Bill 20, The Mill & Elevator Association Act; Senate Bil
75, The Mill & Elevator Association Bond Act; Senate Bill 19, Th
Home Building Act.

The Industrial Commission Act created and established the In
dustrial Commission, the duties of which are to conduct and man
age, on behalf of the State of North Dakota, certain state utilities
industries, enterprises and business projects, then and thereafte
established by law. Numerically, the Industrial Commission con
sists of three members, and its personnel is the governor, the attor
ney general, and the Commissioner of Agriculture & Labor, of th
State of North Dakota. Its powers and duties are defined by the ac
creating it.

"The Bank of North Dakota Act" is one declaring the purpose o
the State of North Dakota to engage in the banking business, and es
tablishing a system of banking, under the name of "The Bank o
North Dakota," operated by the state. The act defines the scope an
manner of its operation, and the powers and duties of the person
charged with its management.

43 The powers, duties and privileges of "The Bank of North Dakota" are fully set forth in the act creating it, and its operation, management and control are, by the act, committed to the Industrial Commission.

"The Bank of North Dakota Bond Act" is one providing for the issuing of bonds of the State of North Dakota, in the sum of $2,000,000; such bonds to be known as "Bonds of North Dakota, Bank Series." In this act, the terms of the bonds are prescribed, and the purposes set forth. It provides a tax, and makes other provisions for the payment thereof. We shall have occasion to refer to this act, later in the opinion.

"The Bank of North Dakota, Real Estate Series," is one providing for the issuing of bonds of the State of North Dakota, in a sum not exceeding $10,000,000, to be known as "Bonds of North Dakota, Real Estate Series." It prescribes the terms and states the purposes of the act; it provides for a tax, and makes other provisions for the payment of the bonds, both principal and interest.

"The Mill & Elevator Association Act" is one declaring the purpose of the State of North Dakota, to engage in the business of manufacturing and marketing of farm products, and for establishing a warehouse, elevator and flour mill system, under the name of "North Dakota Mill & Elevator Association," all to be operated by the state. The act clearly defines its purpose, method and manner of operation. Its purpose is declared to be the encouraging and promoting of agriculture, commerce and industry, by the state engaging in the business of manufacturing and marketing of farm products. The management, operation and control of the association is placed with the Industrial Commission by the provisions of the act.

The business of the association is declared by the act to include the doing of anything that a private individual or corporation may lawfully do in conducting a similar business, subject, however, to such restrictions as are contained in the act.

44 "The Mill & Elevator Association Bond Act" is one providing for the issuing of bonds of the State of North Dakota, in a sum not exceeding $5,000,000, to be known as "Bonds of North Dakota, Mill & Elevator series." The act prescribes the terms of the bonds and states the purposes thereof. it provides for a tax, and makes other provisions for the payment thereof, in the manner specified in the act. It makes appropriations and other provisions for the payment of interest and principal of the bonds, and to carry into effect the provisions of the act.

"The Home Building Association of North Dakota Act" is one declaring the purpose of the state to engage in the undertaking of providing homes for residents of this state. Its purpose is the promotion of home building and home ownership by residents of this state. The purpose of the act is to establish a business system, operated by the state, under the appellation above mentioned, and for the purposes mentioned in it. It prescribes the powers and duties of the persons charged with its operation and management, and provides for an appropriation to carry its provisions into effect. The

management of the business of the association is, like the other sta
industries, placed with the Industrial Commission.

The powers and duties of the association, and the manner of co
ducting the association, are prescribed in the act. To accomplis
the purposes of the act, and to carry out its provisions, the Industri
Commission is empowered to acquire by purchase, lease, or, by t
exercise of the right to eminent domain, in accordance with the pr
visions of Chapter 36, Code of Civil Procedure, C. L. 1913, requisi
property or property rights, and is authorized to construct, repa
and remodel buildings, having strict regard for economy in the a
ministration of its affairs.

Under the act, no home may be built, purchased or sold at a pri
which exceeds $5,000, except in the case of a farm home, where t
selling price shall not exceed $10,000. The foregoing is
45 short synopsis of the laws, the validity of which is called
question in this case. As we proceed with the discussion
the objection of plaintiffs to such laws, we will refer to other pr
visions in them, or some of them, in a more specific manner.

The objections of plaintiffs to the constitutional amendments, a
to the laws in question, may be stated in the order of their impor
ance, under four heads:

(1) That such laws are unconstitutional, in that no sufficie
provision is made in them for a sinking fund, to meet and pay t
principal of the bonds to be so issued, and the interest thereon,
required by Section 182, Constitution of the State of North Dako

(2) That the acts are invalid, for the reason that the legislatu
did not exercise its function of fixing the amount, denominatio
date of maturity, and rate of interest on the bonds; but, that it del
gated such legislative function of fixing and determining those ma
ters, to the governor and the Industrial Commission.

(3) That all the bonds are issued in furtherance of private bu
ness, and not for public purposes.

(4) That, by reason of the plaintiffs being required to pay taxe
which will be used to pay the principal and interest on the bonds,
the manner prescribed by the various acts, and by the creation
the obligations to be evidenced by the bonds, the plaintiffs, so th
claim, will be deprived of their property, without due process of la
all of which they claim is in violation of the 14th amendment to t
Federal Constitution.

Adverting to the first objection, it may be noted that it must
considered, in the light and according to the provisions of Secti
182 of the State Constitution, as amended, and, not by its provisio
as it originally existed, prior to the amendment.

In the case of State v. Hall, — N. D., —, 173 N. W. 76
46 This court construed Section 182, as amended. In th
case, this court held: That, under that section, as amende
the state was duly authorized to issue $2,000,000 of bonded indebte
ness, unsecured, except by the faith and credit of the State of Nor

Dakota, in addition to the $412,000 of the, then, existing bonded indebtedness of the state.

The effect of that decision was to sustain and uphold the validity of Section 182, as amended. This Court is one of last resort, for the purpose of determining the validity of the provisions of the State Constitution, and the statutes and laws of the state, enacted in harmony therewith.

The power of this court, in this respect, are exclusive and unlimited, except as to the question of whether such constitutional provision or statute is violative of any of the provisions of the Federal Constitution.

This doctrine has been universally recognized by the Federal courts, including the Supreme Court of the United States. Neither of the provisions of the State Constitution, under consideration in this case, nor any of the laws drawn in question, which are above enumerated, violate any of the provisions of the Federal Constitution.

Later in the opinion, we will further discuss the constitutional provisions in question. There remains, so far as this objection is concerned, only the question of whether or not Section 182, as amended, has provided a method for the payment of the principal of the bonds, at their maturity, and the interest thereon, at the time of its accrual.

An examination of Section 182, as amended, will disclose that it requires, that every law authorizing a bond issue shall provide for levying an annual tax, or make other provision, sufficient to pay the interest, semi-annually, and the principal within 30 years from the passage of the law. It further provides: That the proceeds of such tax or other provision shall be specially appropriated to the payment
of the bonds and interest, and such tax or other provisions
47 cannot be repealed until such bonds and interest have been
paid.

Then, we see, Section 182, as amended, in a most particular manner, provides a method for the payment of any bonds, and the interest thereon, issued under the authority contained in said section, as amended, and most specifically, by two methods, provides for the accumulation of monies into a special or sinking fund, to pay and retire the bonds, at their maturity, as well as to pay the accrued interest on them, when due.

Keeping in mind, that it is the purpose of the State of North Dakota to engage in the banking business, and, in pursuance of said purpose, has established a system of banking, under the name of the "Bank of North Dakota," and that the legislature, in consonance with the provisions of the Constitution and laws of the state, has authorized the issue of the $2,000,000 of bonds, secured only by the faith and credit of the state, for the purpose of furnishing capital to the "Bank of North Dakota," and that such bank is a state industry or institution, we may, then, inquire what provision has been made, by law, in compliance with the constitutional requirement, under consideration, with reference to the payment of the principal of such bonds, and the interest, which may accrue upon them.

The act authorizing such bonds, in Section 6 provides, that: "At

the time of each annual meeting of the State Board of Equalization hereafter, the Industrial Commission shall deliver to said board, an exact, written statement of all bonds issued, under the provisions of this act, outstanding at that time, including therein, the dates of maturity, interest rates, and all other information proper, to enable the board intelligently to comply with the provisions of this act, in regard to tax levies.

On the basis of such information, the State Board of Equalization shall annually levy a tax, at the time other taxes are levied, sufficient in amount to pay such interest on said bonds as will
48 become due during the year, beginning on the next ensuing first day of January, and said tax shall be collected, in the same manner as other state taxes are collected."

Section 2 of the Act we are considering, provides, that: "The bonds must be payable in not less than ten or more than 30 years from the passage of the Act."

Section 7 of the same act provides, that: "Whenever it shall appear to the Board of Equalization, from the information contained in any statement delivered to it, by the Industrial Commission, at any annual meeting of said Board of Equalization, as provided in Section 6 above, that there will mature, within a period of 5 years from such annual meeting, any of the bonds provided for in this act, the Board of Equalization shall, thereupon, at such annual meeting, levy a tax, in an amount equal to one-fifth of the amount of the principal of such bonds."

The Board of Equalization, however, in determining the amount of such tax, shall take into account, whatever monies, if any, shall have been paid to the State Treasurer by the Industrial Commission, for the specific purpose of paying the principal of said bonds, and interest when due, as provided in Section 5 of this Act.

The Board of Equalization shall apply to the State Treasurer for information as to the amount of such monies, and, as to the times when paid to him. If the amount of such monies paid to the Treasurer, since the date of the last preceding tax levy made by the Board of Equalization, shall equal or exceed one-fifth of the amount of the bonds, so to mature, then such tax shall not be levied; but, if the amount of such monies paid to the State Treasurer, since the date of the last preceding tax levy, shall be less than one-fifth of the amount of said bonds and interest, so to mature, then, the Board of Equalization shall deduct the amount of such monies, so paid, from such one-fifth of such bonds, and shall levy the tax hereinbefore in this section, provided, for the difference. It is the intention
49 of this section to provide that in each of the last five years, before the maturity of any of said bonds, a state tax shall be levied, which, together with such monies as shall, during the next preceding year, have been paid to the State Treasurer, by the Industrial Commission, for the purpose, shall be at least sufficient to pay one-fifth part of the principal of said bonds."

Thus, by taxation, is provision made for the payment of the interest on the bonds, and the payment of the principal.

The second method for the payment of the principal and interest

of the bonds in question, is by the earnings of the "Bank of North Dakota." In order to have some definite idea about its earnings, it may be well to know something of its resources for transacting business.

First, it has a capital of $2,000,000, derived from the bond issue. Section 7 of Chapter 147—this is House Bill No. 18, which in creating the bank—provides, that all state, county, township, municipal and school district funds, and fund- of all penal, educational and industrial institutions, and all other public funds, shall be, by the person having control of such funds, deposited in the "Bank of North Dakota," within three months from the passage and approval of the act, subject to disbursement for public purposes, on checks drawn by proper officials, in the manner now or hereafter provided by law.

It is a matter of common knowledge, as it also appears from the records of the bank, which are public, the bank being a state institution, that its resources including the deposit of such public funds are approximately $17,000,000; it is also, by law, authorized to receive deposits from other sources, including deposits from the United States Government; it is authorized, by law, to perform the functions and render the services of a clearing house, and is authorized to deal in exchange, both domestic and foreign, and is authorized to discount negotiable paper; it is authorized to make loans to counties, cities or political subdivisions of the state, or to state or National Banks. It may not make loans or give its credit to any individual, association or private corporation, except that it may make loans to any individual, association or private corporaton, secured by the duly recorded first mortgage on real estate, in the State of North Dakota, in amounts not to exceed one-half of the value of the security, or secured by warehouse receipts issued by the Industrial Commission, or, by any licensed warehouse within the state, in amounts not to exceed 90 per cent of the value of the commodities evidenced thereby. It may not loan on real estate security more than 30 per cent of its capital, nor, in addition thereto, more than 20 per cent of its deposits.

The act establishing the bank appropriated $100,000 to carry out the provisions of the act, which appropriation will not be used, and is in process of being repaid into the State Treasury, by the Industrial Commission; this, for the reason that, though the "Bank of North Dakota" has been in operation less than a period of six months, it has, in that short period of time, so firmly established itself, and so rapidly did its business materialize, that it has been enabled to earn net, approximately, $67,000; it has made or has in course of completion over one and one-half million dollars in real estate loans, and has received other applications for more than six million dollars of such loans from the farmers of this state.

It is apparent that, as it is longer established, and continues to exercise the powers conferred upon it by law, and multiplies its business relations, its earning power will be very large, and this, on account of its large capital and deposits, which will all become active in carrying on such business transactions as are contemplated by the act creating it; that the bonds issued by the state, for the

purpose of furnishing capital to the bank, and the interest thereon will be repaid out of the earnings, without the necessity of exercising the power of taxation provided for, would seem certain.

Section 5 of Chapter 148 being the act providing for the issuing of the bonds, for the capital of the bank, provides that: "From time to time, the Industrial Commission shall, out of the earnings derived from the operation of the "Bank of North Dakota" pay to the State Treasurer such monies as the Commission deem advisable, to devote to the purpose of paying said bonds and interest. In making such payments the Commission shall file a statement, with the State Treasurer, specifying the purpose of such payment. When monies shall have been so paid to the State Treasurer, he shall apply the same to their specified purpose as hereinafter directed."

Thus, it is seen, that the payment of the bonds and interest, out of the earnings, is what is meant in Section 182 of the Constitution, as amended, by the use of the words: "Or such other provisions," where the constitutional provision uses the language: "Every law authorizing a bond issue shall provide for levying an annual tax, or make other provisions, sufficient to pay the interest semi-annually, and the principal within 30 years from the passage of the law."

There is a third method, also, provided for in Chapter 148 of Session Laws of 1919, which may be resorted to, to pay both principal and interest of the bonds, should there be a deficit from either of the other sources of revenue, to which we have referred. It is found in Section 9 of the chapter just referred to. Keeping in mind that the principal and interest of the bonds, for the "Bank of North Dakota," are to be duly paid by taxes and the earnings of the bank, and that those are required to be placed in a special fund for that purpose, it is further provided, "If, for any reason, the state funds shall, for the time being, be insufficient, the Treasurer shall supply the deficiency out of any other available monies of the state in his custody; but, in that case he shall, as soon as possible, out of
52 the Bank Bond Payment Fund, return the amount of such deficiency to the source whence taken."

That ample provision has, by law, been made to pay the principal and interest of the "Bank of North Dakota Bonds", within the time specified by law, in accordance with the provisions of Section 182 of the State Constitution, as amended, there is not the least doubt; indeed, there could scarcely be a more perfect and thorough method of compliance than that provided.

"The Bonds of the State of North Dakota, Mill & Elevator Series," in the sum of $5,000,000 are not secured exclusively by the faith and credit of the State of North Dakota, but, when issued, the payment thereof may be guaranteed, as provided in Section 182 as amended; and, when issued, delivered and paid for, their payment is secured by the faith and credit of this state, as provided in Chap. 153 of the Session Laws of the Regular Session of 1919. In addition thereto, they are secured by first mortgage on the state owned utilities, enterprises, or industries, which such bonds are issued to construct and

operate, in an amount not exceeding the value of them. They are made payable to the State Treasurer.

The earnings of the elevators, mills, etc., are accumulated into a special fund, under the direction of an Industrial Commission, for the purposes of paying the principal and interest of the bonds. In fact, the same method is provided by Chap. 153 of the Session Laws of 1919, for paying the principal and interest of such bonds, as the bonds issued for the purpose of establishing the "Bank of North Dakota;" that is, such bonds and interest shall be paid by a special fund, accumulated from the earnings, and by taxation, in the manner prescribed in the act, and, if for any reason, a deficiency arises from either of these sources, then, the bonds or interest may be paid, by the State Treasurer, out of any available money in his custody. What is true of the Mill & Elevator Bonds, as to the method of paying the principal and interest thereof, is likewise true of the
53 $10,000.00 of bonds to be issued by the State of North Dakota, for the purpose of loaning upon real estate in the State of North Dakota, and of all other bonds under consideration in this case.

There is not the least doubt that the laws in question provide an ample and complete method for the payment of both principal and interest of the bonds in question, and one in entire harmony with the provision of Section 182 of the Constitution, as amended.

As to the second objection, we are clear, that it contains no merit. The provision of the law in question, which confers upon the governor and the Industrial Commission the power and duty of fixing the denomination, date of maturity, and rate of interest of the bonds, is not the delegation of a legislative function, but, it merely authorizes them to perform certain administrative duties, in accordance with the provisions of the law authorizing and determining their administrative duties.

We come, now, to consider the third objection, wherein it is claimed that the bonds are issued, or are to be issued, in furtherance of private business, and not for a public purpose. With this objection may be examined the fourth, which claims that the plaintiffs, being required to pay taxes, to pay the principal and interest of such bonds, are being deprived of their property without due process of law.

It is necessary in determining these objections, and before we enter far upon the discussion of them, to define, and have a clear conception of, the nature and meaning of private business.

We have been unable, in the search of the authorities, to find any complete definition of the term private business. Perhaps, there is none. It is one however, which is readily defined. It may be defined as a business or enterprise, in which an individual or individuals, an association, co-partnership or private corporation, have invested capital, time, attention, labor and intelligence for the
54 purpose of creating and conducting such business, for the sole purpose that those who make such contributions may, from the conducting of such business, make, gain and acquire a financial

profit, for their exclusive benefit, improvement and enjoyment, and, exclusively, for their own private purposes.

They are not concerned with the public health, safety, morals or welfare, but, are concerned, wholly, with making a financial profit from the operation of such business, for, exclusively, their own private use and benefit.

As contra-distinguished from a private business, a public purpose or public business has for its objective the promotion of the general welfare of all the inhabitants or residents, within a given political division, as, for example, a state, the sovereignty and sovereign powers of which are exercised to promote the public health, safety, morals, general welfare, security, prosperity, contentment, and equality before the law, of all the citizens of the state.

Having thus drawn the distinction between what constitutes private business, and what, a public purpose, it is next in order to determine whether the proceeds of the bonds issued, or proposed to be issued, are to be used for promoting and conducting a private business, for the benefit of certain individuals, associations or private corporations, or, are the proceeds to be used for a public purpose by the sovereign power, the state, for the promotion of the general welfare of all the people of the state.

If the industries to be established, and which are established, are owned and operated by the state, in order to promote the general welfare of all the people, and the net profits derived from the operation of such industries, become public funds of the State of North Dakota, and payable, as such, into its treasury, for the use and benefit of the state, and inhabitants and residents thereof, in like
55 manner as other public funds, then, it must follow that the purpose, business and industries are public.

It must be kept in mind, also that the "Bank of North Dakota," "The Mill & Elevator Association," and all other agencies established by the state, for the purpose of operating the state industries in question, are not private corporations or private agencies, but, are, so to speak, arms of the sovereign power, the state, reaching out to execute its mandates.

When the "Bank of North Dakota" functions, it does so as an agency of the sovereign power of the state, in like manner as the Treasurer of the State of North Dakota. The same is true of every other state industry, which is the subject of this controversy.

We may now turn, for an instant, and seek the reason of the state for entering into the conduct of the industries in controversy.

In the case of Scott v. Frazier, 258, Federal Reporter, 676, the Hon. Charles F. Amidon, District Judge, used the following, most expressive language: "The people of North Dakota are farmers, many of them pioneers. Their life has been intensely individual. They have never been combined in incorporated or other business organizations, to train them in their common interest, or promote their general welfare. In the main, they have made their purchases, and sold their products, as individuals. Nearly all their live-stock and grain are shipped to terminal markets at St. Paul, Minneapolis and Duluth. There, these products pass into hands

f large commission houses, elevators and milling companies and
ve-stock concerns.

These interests are combined, not only in corporations, chambers
f commerce, boards of trade, and interlocking directorates, but,
n the millions of understandings, which arise, among men having
common interests, and living through long terms of years in
6 daily intercourse of great cities. These common understand-
ings need not be embodied in articles of incorporation or trust
greements. They may be as intangible as the ancient powers
f the air, but they are as potent in the economic world as those
ncient powers were thought to be in the affairs of men. It is the
otency of this unity of life of men, dwelling together in daily
ntercourse, that has caused all nations, thus far, to be governed
by cities.

As North Dakota has become more thickly settled, and the means of intercourse have increased, and the evils of the existing marketing system have been better understood, no single factor has contributed as much to that result as the scientific investigation of the state's Agricultural College, and the federal experts connected with the institution. That work has been going on for a generation, and has been carried to the homes of the state by extension workers, the press and the political discussion of repeated political campaigns.

The people have thus come to believe that the evils of the existing system, consists not merely in the grading of grain, its weighing, its dockage, the price paid and the disparity between the price of different grades, and the flour producing capacity of the grain. They believe that the evil goes deeper; that the whole system of shipping the raw materials of North Dakota to these foreign terminals is wasteful and hostile to the best interests of the state. They say in substance:

(1) The raw materials of the state ought to be manufactured into commercial products within the state. In no other way can its industrial life be sufficiently diversified to attain a healthy, economic development.

(2) The present system prevents diversified farming. The only way that it can be built up is to grind the grain in the state, which the state produces—keep the by-products of bran and shorts here, and feed them to live-stock upon the farms of the state. In no other way can a prosperous live-stock, dairy and poultry industry be built up.

57 (3) The existing marketing system tends directly to the exhaustion of said fertility. In no other way can soil depletion be prevented, except to feed out to live-stock, at least as much of the by-product of grain, raised upon the farms as that grain produces when ground, and thus put back into the soil, in the form of enriched manures, the elements which the raising of small grains takes from it."

In addition to the clear and concise reasons given by Judge Amidon, there are many others why the state should engage in the conduct of these industries.

The principal source of the production of wealth of North Dakota is agriculture; it is a conservative estimate that 90 per cent of the wealth produced by the state is from agriculture. It is the foundation of the state's prosperity and welfare, and upon it, as such, rests all other business of the state.

The mercantile pursuits, the banking interests, and every business pursuit, within the state, depends directly, for its success, upon the wealth produced by the farmers of this state.

The wealth produced by the farmers of this state is the life blood of the business interest of the state; hence, the conservation and securing of the wealth produced by the farmers, to them, is of vital interest, not only to the farmers, but, to everyone who is engaged in the carrying on of business within the state.

The word wealth, however, is a relative term as applied to the farmers of this state. It means, only, the excess which remains, after deducting from the selling price of the products of the farmers' toil, the cost of production; that the farmer receive the full value of the product, which he produces, minus the cost of production, is a question which is of vital interest, not only to him, but, to every business interest in the state. For, business must be done on whatever profit there is, over and above the cost of production. Likwise, the wages of labor in this state, to some degree, depends upon the same conditions.

The farmer cannot pay a laborer high wages, if the cost
58 of production is but little less than the selling price of the products he produces. If the farmer makes a small profit, business interest must languish, and labor, which the business interest employ, will, no doubt, more or less suffer by this condition, so that it may be concluded that the interest of everyone in the state is so vitally affected by the profits derived from agriculture, that the matter may be said to be, and is, of public interest, and vitally affects the public welfare of all. It is thus apparent that any condition which militates against the profits of the agriculturists of this state, is inimicable to the general and public welfare of the inhabitants of this state. It may not be amiss to consider one of the principal productions of this state, and the great loss entailed in marketing it; namely, wheat. On the average, this state produces, annually, approximately 125,000,000 bushels of wheat.

Under the conditions, which have herstofore existed, for the purpose of marketing, wheat has been graded. The grades are No. 1 Hard, No. 1 Northern, No. 2, 3, 4, and no grade. Under this system of wheat grading, the agriculturists of this state have, in the last quarter of a century, unquestionably lost hundreds of millions of dollars. There has been what may be termed a "spread" between the No. 1 Hard and lowest grade above named of perhaps 20 cents per bushel, and sometimes much more. This difference is made to exist on many pretexts; for instance, though one grade of wheat, say, for instance, No. 3 may contain wheat of just as

good milling quality, and, when manufactured into flour, that flour may be, and is usually, of just as high quality as that made from No. 1 Hard wheat, there is, nevertheless, perhaps a "spread" of ten cents per bushel, between the two grades of wheat, based perhaps upon the fact that the lower grade of wheat may be somewhat bleached by having stood out in the weather, in the shocks, and have been subjected to inclement weather, while wheat, near the same field, may have been threshed and secured without having been subject to adverse weather conditions.

The only difference between the two grades of wheat, in this instance, is practically one of color. The wheat which has been subject to more or less inclement weather, being what is termed bleached, of course, readily affords an excuse for the difference in grade and price. Again, one grade of wheat, for illustration, take the same grades, the lower grade may weigh 45 lbs. to the bushel, and the higher 60 lbs. to the bushel; while there may be a great difference in their weights, according to eminent authority, there is not, as a general rule, much difference in their milling qualities and values.

It must be remembered that wheat is not sold by the measured bushel; while a bushel, struck measure, of light wheat might not weigh over 45 lbs. It must be remembered that 45 lbs. do not make a bushel, and that 60 lbs. does. It takes 60 lbs. of wheat to make a bushel, whether the wheat is heavy or light.

The 60 lbs. of the light No. 3 wheat, being of just as good milling quality as the No. 1 Hard wheat will substantially make just as much flour, of just as good quality, but, under the system of grading, by reason of the lightness of the poorer grade, there is perhaps a "spread" of all the way from ten to twenty cents per bushel of 60 lbs.

Professor Ladd, President of the North Dakota Agricultural College, and one of the most eminent chemists and scientists of the United States, and well known, and his ability recognized in foreign nations, has demonstrated, scientifically, that the poorer grades of wheat, such as above referred to, are substantially of just as good milling value and produce flour equally of as high a grade as that of the highest grade of wheat, he concludes, and we agree with this conclusion, that the fair and equitable method of marketing wheat is to base the price thereof, on its milling value.

It has been estimated that the loss to the farmers of this state, by loss in grains and the values fixed thereby, instead of by the milling value, coupled with the loss by dockage, and the failure to pay for the dockage, together with many other elements of loss in the marketing of wheat, outside of the state, including the loss the fertility to the soil, by the failure to feed any of the by-products thereof, to stock within the state, thereby enriching and re-vitalizing it, represents an annual loss of perhaps $55,000,000, to the wheat raisers of this state.

There is, also, indisputably, considerable loss in the marketing of other grains, all of which, taken together, aggregate a vast sum. This vast loss is not only a loss to the farmers of the state, but it is,

as well, a loss to the business, for it must be done on the profits, above production.

These vast losses sustained by the farmer, are reaped as rewards by the great elevators and milling interests, commission firms, chambers of commerce, located in Minneapolis, St. Paul and Duluth, or other cities outside the state. Into their hands they have passed, as profits, never to return to the farmers or business interests of the State of North Dakota. To prevent these losses, to retain in the State of North Dakota, in the future, these lost profits, to pay the farmer the full value of the product of the soil, produced by him, and by thus so doing, to secure the prosperity of every business and of every inhabitant of the state, and thus promote the general and common welfare of every inhabitant of the state, the constitution has been amended, laws enacted, and bonds, by the legislature, authorized and issued, for the purpose of establishing state owned elevators and mills for the purpose of affording the producers of grain, within this state, a market, where they will receive the full value of their products.

Under Section 185 of the Constitution of the State of North Dakota, as amended, which was submitted to the people, at an election,
and by the votes of a majority of the voters voting at such
61 election, duly adopted, and which constitutional amendment has legally become a part of the organic law of this state, and is now in full force and effect, the state is duly authorized and empowered to establish and operate state owned elevators and mills.

The legislature has enacted into law, the laws in question, establishing these state owned utilities, under and by virtue of such constitutional authority. Not only were such laws duly enacted by the legislature of this state, but, after being enacted, under the initiative and referendum provision of the constitution, they were, each and all, referred to the people for their approval, and at a general election, each of said laws were again approved by the majority of the electors voting thereon.

It is often said that bread is the staff of life; that it is one of the prime necessities, there is not the least doubt; that, out of each of the grains raised in this state, prime necessities are manufactured is quite clear. All the grain raised in this state must be, and is, considered a prime necessity. It is needed and must be had to sustain the very life of the people, and without it people would starve, as they would freeze if they had no fuel.

We are thoroughly convinced that the establishing and maintaining of state owned elevators and state owned mills, for the marketing and manufacturing of wheat, and other small grains produced in the state of North Dakota, is a public purpose, for which taxes may be levied, in the manner provided by Section 182 of the Constitution, as amended, and that such state owned elevators and flour mills may be paid for by taxation, or, by the other provisions set forth in Section 182, as amended, and that the levying and collecting of such taxes, in the manner provided for in such constitutional amendment, and the laws herein, in question in no manner violates the 14th amendment of the Federal Constitution, nor does it, in any

COPY BOUND CL

manner, constitute the taking of private property without due process of law. See, Jones et al. v. City of Portland, 245
2 U. S. 217. The appellants have cited a long list of authority upon which they rely to prove the correctness of their contentions. It is apparent to us after examination of such authority that the same is not in point. It relates to conditions and laws of an entirely different nature than those presented in this case. We cannot take time nor space to analyze all the authorities cited by appellant. Its character and inapplicability as authority is well illustrated by the case "The Citizens Savings & Loan Association v. Topeka City," 20 Wallace 655.

In that case the City of Topeka, under an act of The Kansas Legislature, undertook to issue $100,000.00 of its bonds payable to The King Wrought Iron Bridge Manufacturing and Iron Works Co., of Topeka, to aid and encourage that company in establishing and operating bridge shops in Topeka, such bonds were as we view the matter donated to said Bridge Company.

The Bridge Company was a private corporation engaged in a private business, the profits of which inured wholly to it. The donation of the bonds by the city of Topeka to it, was the loaning of that city's credit to establish or carry on a private business or enterprise. The bonds were to be paid by the levy of taxes.

The Supreme Court of the United States, held such bonds invalid for the reason that the bonds were issued to assist a private business and not for a public purpose. It held, the City of Topeka having no authority to make the contract, there was no power to levy a tax.

That decision, however, does not apply in the case at bar. The industries under consideration in the present case are all public industries belonging to the State of North Dakota. None of them the private industries or enterprises but on the contrary are public enterprises and business exclusively owned and wholly operated by the State of North Dakota in its sovereign capacity, for the use and benefit of all the people of the State, in other words, for a public purpose. Hence the decision in the Topeka Case and largely all other authority cited by appellants has no application to this case.

63 The creating and constituting of the "Bank of North Dakota," in the manner above set forth, the authorizing the $5,000,000 "Mill & Elevator Bonds," and the $10,000,000 "Bonds of North Dakota, Real Estate Series," are, each and all, acts intended to stimulate the production of, and the caring for the marketing of, wheat and other small grains, in the State of North Dakota, and that is held to be a public use, to effectuate which, a tax may be levied, and collected, and we so determine and decide. Each and all of said bond issues are in accord with the provisions of the constitution, in question, and laws of the State of North Dakota, and we so hold.

In deciding, as we have, supra, that the state ownership and construction of elevators and mills, the creating of the "Bank of North Dakota," and the authorizing and issuing of all bonds in question, are for a public use, for which the legislature may authorize the

OSE IN CENTER

levying and collection of a tax, on the property within this state, i
is clear, by the highest authority, that the decision of this cour
will be accepted and accorded the highest respect, if properly base
upon merits, and the provisions of the State Constitution, under con
sideration, and the laws *in question* are not contrary to the pro
visions of the Federal Constitution, and we hold they are not, fo
this court is presumed to be in better position to know the condi
tions existing in the state, affecting the matters in controversy, an
is more favorably situated to acquire accurate information, in tha
regard.

See, Hairston v. Danville & Western Ry. Co., 208 U. S. 598, 607
Union Line Co. v. Chicago & Northwestern Ry. Co., 233 U. S. 211
Fallbrook Irrigation District v. Bradley, 164 U. S. 112, 160; Clar
v. Nash, 198 U. S. 361, 369; Strickley v. Highland Boy Minin
Co., 200 U. S. 527, 531; Offield v. N. Y., N. H. & H. R. R. Co
203 U. S. 372, 377; O'Neil v. Leamer, 239 U. S. 244, 253.

64 The two constitutional amendments, under consideration
were duly adopted, by the deliberate act of the voters of th
state, and its legislature.

This state through the Enabling Act of Congress, was authorize
to organize an independent state, with the power of self-governmen
and this, with no limitations or restraints, save, and except, thos
prescribed by the Federal Constitution and its amendments, whic
are largely contained in Section 10, Article I of the Federal Const
tution.

The State Constitution, and the amendments thereto, is the fund
mental law of this state, and, as such, may be construed and carrie
into effect, by the courts of the state, without their determination
in this regard, being subject to a review by the Supreme Court of th
United States, except and unless in cases, where, what is accomplishe
or sought to be accomplished, is or may be assumed to be, in conflic
with the Federal Constitution, or some of the provisions thereo
or restraints therein imposed upon the state, prohibiting the exe
cise of certain powers, by it.

Hence, the legislature of this state, except for the limitations an
restraints contained in the Constitution of the United States, and th
amendments adopted thereto, is left free to act, under the Constitu
tion of the State of North Dakota, and it may enact such laws, i
the exercise of its constitutional powers, as its legislative wisdom ma
direct.

The laws under consideration violate no provision of the Co
stitution of U. S., nor of its amendments; nor are they violative o
any provision of the State Constitution, nor any amendment theret

The direct benefits, which the people of this state are to receiv
from the Constitutional provisions and laws in question, have bee
quite thoroughly discussed. We may be permitted to refer to som
of the indirect benefits and beneficial consequences, whic
65 reasonably may be expected to materialize, as a result of th
adoption of the constitutional amendments, and the enac
ment of such laws, after they have been given sufficient opportunit
to function.

While all such laws will, in a greater or lesser degree contribute to the beneficial results, which may be reasonably expected to result therefrom, the Home Building Act, and the act providing for the loaning of the $10,000,000 upon the farms and real estate, within this state for the purpose of securing and providing homes for the residents of this State, will serve *best to* illustrate the conclusions we wish to draw, with regard to the anticipated beneficent effect of these laws. Each of the laws and constitutional amendments are based upon a broad public policy, intended to be beneficial to every citizen of this state, as well as the State, as such.

The home is the unit of organized and civilized society. The state is composed, largely, of the aggregate of such units. The strength of the state is in proportion to the average strength of the units of which it is composed. Figuratively speaking, the morality, integrity, and every element of its character, is measured by the average of those virtues and qualities of character existing in the units composing it.

For the state to afford to the home the greatest opportunity for the development of all that ennobles that home, is but to secure its own solidarity and permanence.

66 The home, in effect, is a minature government, wherein legislative, executive and judicial power is exercised. In order for that home, that min-ature government, to function properly and in the highest degree, it is necessary that the above denominated home should be a fixed one. That is, the members of, or the family, constituting such home, should receive such encouragement, at the hands of the law, such assistance and opportunity as would enable those, not otherwise in position to do so, or anyone a resident of this state who desires to benefit by such law, to acquire a permanent home.

With what fond recollection do many of us consider the home of our youth, however humble it may have been. There is indelibly stamped upon our mind, mental picture of all the things surrounding and connected with it. This, for the reason that perhaps 15, 20 or more years of the most joyous period of life, that of youth, was enjoyed at, and within, such home. In other words, it is the very permanence of the home, and our long association with and attachment to it, that endears it to us, and thus we reach the philosophy which lies at the base of the Home Building Act, and other acts under consideration, of the same nature.

All the land in this state was, at one time, subject to homestead entry, under the laws of the U. S., and this, practically free of charge. Nevertheless, and notwithstanding, this great gift of land to our people, many of them have been unable to prosper and maintain a home thereon, and this, notwithstanding the people of the state are as frugal and of as high character as any in the U. S., or in the world.

There are 30 or perhaps 40 per cent of the people of this state, especially the farmers of the state, who are tenants. They have no fixed abode; they move from place to place, year by year, or at intervals. They have no permanent home, where they may stay, for

15 or 20 years, or even a whole lifetime, and where their children may perhaps desire to remain after the parents have passed be-
67 yond. While, in some instances, some of the homeless and landless may be individually responsible for the financial condition in which they find themselves, nevertheless, as a whole, it is clear that their condition is brought about through circumstances and conditions, entirely beyond their control.

It may be, and perhaps, it is true that they have not received the full market value of the products which they have produced. It may be, and perhaps partly is, because they have been compelled to pay excessive rates of interest; it may be perhaps they have been compelled to pay excessive prices to procure the bare necessities of life, whatever the causes may be, it is sure, that they exist.

To seek those causes, and to remove them, is a great task, to accomplish which, the legislator must employ his greatest intelligence, guided by the dictates of his conscience. If he, however, does this, and does it well and wisely, by just and progressive laws, fairly and fearlessly enacted, his services to the State and the people thereof will be of immeasurable value. For, if opportunity is afforded those, who desire it, to obtain a home, and, if beneficent laws are enacted, which will enable the home owner, by the exercise of reasonable effort and the doing of a reasonable amount of labor, the value of which is secured to him, by protective laws, to maintain and retain such home, he will become attached to it and will be vitally interested in all that concerns it, and thus, become more vitally interested in the welfare of his state and nation.

Such, we believe was the spirit of the legislature, which duly enacted the laws, which are in question, and it was the same spirit that moved the people of this state to adopt the constitutional provisions in question.

We are fully convinced they had ample and full authority to do that which they have done, and that they have done it well and wisely, and their work should be, for no light or transient reason, undone.

The laws enacted are constitutional, and not contrary to any of the provisions of the Constitution of the U. S., or the amendments thereto. The people of this state have the right, authority
68 and privileges to amend their constitution, in the way it has been amended by the two provisions in question, neither of which are in conflict with the Federal Constitution, or its amendments, and neither the laws nor the amendments, to the state constitution, take from the plaintiffs any right guaranteed to them under the 14th amendment to the Federal Constitution.

We are of the opinion that the order of the trial court, sustaining the demurrer of the defendants to the complaint of the plaintiffs, was a proper one, and should be affirmed.

It is affirmed.

The case is forthwith remanded.

RICHARD H. GRACE.
J. E. ROBINSON.
H. A. BRONSON.

BRONSON, *J.*:

I concur in the opinion of Justice Grace. Chief Justice Christianson, in an opinion which can be termed neither a dissent nor a concurrence, considers this case a friendly law suit, presenting no actual controversy, and in effect refusing to pass upon the issues submitted by reason of his dissenting opinion in a former case, (172 N. W. 80) holding certain Constitutional Amendments to be not constitutionally adopted.

This case is here upon appeal from a demurrer to the complaint sustained in the trial court; there is no contention made by the parties that this is in any manner merely a friendly law suit. Real issues are presented. The fact that these issues from a legal viewpoint, upon the facts, are without merit, does not create thereby a case involving no actual controversy.

There is no contention by any of the parties, that the Constitutional Amendments, now a part of the Constitution of this State, ratified by the people and the Legislature, and approved by this court (172 N. W. 80), upon which the particular acts now involved, were enacted, are unconstitutional. Upon the issues presented before this court, three questions are presented, involving Federal and State Constitutional provisions, (1st) that the acts involved are not for public purposes; (2nd) that no proper constitutional provisions has been made for sinking funds; (3rd) that Legislative powers have been improperly delegated. I here desire to consider briefly one question. Do the acts involve public purposes? There can be no question that under the State Constitution the acts involved are all within the Constitutional provisions, adopted both by the people and the Legislature, for such purposes. From the viewpoint of the State Constitutional authority, as ratified by the people and the Legislature of this State, there can be no question that these acts involved cover a procedure which is deemed and declared by this State to be public in its nature. The only further question involved is whether this State in the proper exercise of its police power, pursuant
70 to the Will of the People, as declared in the constitution and its laws, deprives, or may deprive the relators, and those similarly situated, of the protection of the Federal Constitu-ion in taking or attempting to take, by process of taxation, for such purposes, their property. If the acts involved, considered with reference to the Federal Constitution, and the Federal Judicial interpretation that may be placed thereupon, are for public purposes, they are valid and not subject to Federal Constitutional objection. Peculiarly in this State, for a great many years, the production, marketing and sale of cereals has become a matter of public concern, and public welfare. For many years, progressively statutory authority has been enacted covering State supervision, State aid and State regulation in the furnishing of seed, the quality of the seed, the raising or production of wheat, or other cereals, the grading of grain, the public storage of the same, covering dockage, regulation of elevators, State experimentation in cereals, and their manufactured products,

Through a long, continued and persistent public demand, the people of this State, through Constitutional Amendment and Legislative enactment have stated that it is essential for the public welfare of this State, dependant upon agriculture and its products, and for the well being of the State and its citizens, to regulate, supervise and even own in a limited way, public elevators, warehouses and mills engaged in handling or manufacturing these cereals.

In this connection and for these purposes, declared to be public by the people and the sovereign power of this State, the acts involved herein have been enacted. The State Terminal Elevator and Mill Act is the principal and fundamental Act. It provides a means for all of the people of this State, both producers and consumers, to secure for its main and chief source of all of its wealth, a regulation, a supervision and a demonstration of the real worth as a commodity, of the cereals produced in this State, principally wheat, and the manufactured product, flour. It seeks to show, through State demonstration and experimentation in a limited way, to all of the
71 people of this State, the enormous waste and loss that is suffered by the people of this State through improper marketing conditions, through unscientific grading of grain, through unnecessary loss by extensive railway hauls, and through excessive loss sustained at seasons of the year when grain so produced in this state must either lie in the field, or be taken in Railroad transportation to terminals without the State. The other acts are all corollary to this main act. They aid and assist in carrying out this function of the State in behalf of its citizens, for public purposes, and for their public welfare. The home building act is also corollary, evidencing in a manner, governmental aid in upbuilding the homes for any or all of the citizens in this State, analagous somewhat to rural credit systems. There ought to be no question that these acts present a public purpose upon a much higher plane, and much more for the general common good than that evidenced and upheld by the Supreme Court of our United States, concerning a municipal fuel yard, in Jones v. Portland, 145 U. S. 217.

H. A. BRONSON.

72 BIRDZELL, *J.*:

I concur in the affirmance of the order appealed from on the ground that the respondents, who were plaintiffs below, have not demonstrated the unconstitu-ionality of the acts of the legislature upon which the defendants and appellants rely for justification of the acts complained of in the complaint filed. Neither upon oral argument nor in the briefs have the respondents pointed out wherein the provisions of the State Constitution are violated by the failure of the acts to provide for a sufficient sinking fund to pay the principal of the bonds to be issued, nor wherein legislative functions have been delegated in the matter of fixing amounts, denominations, maturities, and rates of interest. In fact, the appellants in their brief have contented themselves with a mere statement of the foregoing constitutional objections without attempting to specify or point out

COPY BOUND

herein the Constitution has been violated in those connections. bviously the ordinary presumption of the constitutionality of acts f the Legislature obtains and it is not overcome by a mere state- nent of a constitutional objection to legislation which does not pur- ort to show wherein the Constitution has been violated in the man- ner stated. There is no argument in the brief in support of the fore- going objections. It is not contended that, in connection with the uthority to issue bonds, provision is not made sufficient to pay the nterest semi-annually and the principal within thirty years from he passage of the law, within the requirements of Sec. 182 of the Constitution as amended. So this objection might properly be con- sidered as abandoned.

As to the objection that the provisions in the various laws, author- izing the Governor and the Industrial Commission to fix amounts, denominations, maturities and rates of interest, involves delegation of legislative power, it is not apparent wherein the indebtedness for the specific purposes has not been adequately authorized by the Leg- islature, nor wherein the provisions relating to denomina- 73 tions, rates of interest, etc. amount to anything more or less than regulations of detail in carrying out the authorized pur- poses. On its merits, therefore, this objection should be regarded as being without foundation.

With the exception noted above, the brief of the appellants con- cerns itself wholly with the argument that the purposes for which the bonds are authorized to be issued are not public purposes, and are therefore purposes for which taxes can not be levied without de- priving the appellants of property without due process of law, in violation of Article 14 of the Amendments of the Constitution of the United States. This question is one for the ultimate determina- tion of the judicial authority of the Federal Government. This court knows from facts stated upon the oral argument, as well as from facts which are a matter of general information in the State, that a similar suit is now pending for decision in the Supreme Court of the United States, the decision rendered by the Federal District Judge being cited and relied upon in the principal opinion herein. It is also a matter of general information that at the Special Session of the Legislature, just recently closed, a joint resolution was passed asking for the advancement of the hearing of that cause in the Federal Supreme Court. From these facts it might at first blush seem that the decision of this question now by this court would be a work of supererogation. But the Supreme Court of the United States has said that the decision of the highest court of a State, as to what should be deemed a public purpose in a particular state, is en- titled to the highest respect, and therefore it may not be out of place for this court to concern itself with the Federal question, to the ex- tent at least, of expressing its opinion upon whether or not the purposes for which the indebtedness is authorized to be created are public. See Jones v. Portland, 245 U. S. 217.

What is or what is not a public purpose must necessarily depend upon the condition which calls forth the particular activity on the part of the State. The economic and legislative history of the State

LOSE IN CENTER

affords the chief repository of information to be drawn upo
74 in the decision of the question. This matter has been s
clearly stated in the decision of the Federal District Judg
that it seems superfluous to do more than adopt that opinion.

It is, of course, the prime function of government to secure an
preserve equality of economic opportunity, and, in order to do s
the State must concern itself with the facts. It is confronted by
condition. If the people of the state, through the adoption of Co
stitutional Amendments (going back a number of years, for in
stance, to the adoption of Amendments authorizing public ownershi
of Terminal Elevators), and by the adoption at referendum electio
of acts of the Legislature submitted for their approval, conceive tha
the conditions to be dealt with require a limited public ownershi
of businesses or utilities as instrumentalities to be employed in s
curing a greater degree of equality of economic opportunity, the
judgment upon such question is entitled to the greatest weight.
say limited public ownership for the reason that after all, that is a
that is attempted, for the Government of the State of North Dako
cannot take a long stride in the direction of public ownership
businesses, heretofore considered exclusively private, with the mea
at its disposal, and manifestly all steps taken must be justified upo
the basis either of experience or experiment. A court is not
gifted with assured wisdom or prophetic vision that it can say in a
vance of actual trial when the limit will be reached. Suffice it
say that the question as now presented is one partaking so strong
of a political character that the people can neither avoid the r
sponsibility for nor escape the consequences of its decision eith
way. The constitution, as I view it, is not a legal straight-jack
restraining the movement of the governments of sovereign states
every turn in their attempts to grapple with their peculiar econom
and governmental problems. Neither does it act as a perpetu
check upon the application of remedies which the people of a sta
might deem it expedient to employ in solving their own problem

Whatever damages the plaintiffs in this case may suffer, the
75 will suffer as members of the democratic family associate
as the government of the state. I know of no way a citizen
a democracy can be relieved of his share of the burden incident
the character of the government, and, as a matter of reciprocity,
may be noted that all the blessings of a democratic government a
thrust upon an unassenting minority. Concededly the experime
attacked is a public one, and in this respect it differs from all a
tempts that have been heretofore made to accomplish government
aims through aid to private individuals and corporations. The co
trol here is also public.

From the standpoint of constitutional law the essence of the who
matter is that the validity of the laws assailed can not be decided o
of hand on the basis of what might or might not have been co
sidered a public use under some anterior condition of society.

While the legislative declaration of the public purpose is not co
clusive, it can not be judicially declared erroneous or unfounded

this state in view of the previous industrial and economic experiences of our population.

L. E. BIRDZELL.

76 GREEN et al.

vs.

FRAZIER et al.

CHRISTIANSON, *Ch. J.*:

In my opinion this is a so-called friendly or "fictitious" lawsuit, and does not in fact present an actual controversy. Hence, I am agreed that the action should be dismissed. See, Chicago, etc. R. Co. v. Wellman, 143 U. S. 339, 36 L. Ed. 176.

The majority members, however, treat the case as a real one, and pass upon the merits of the constitutional questions. In so doing they hold—(as announced in paragraph 2 of the syllabus)—and their conclusions upon all questions discussed in the majority opinion are predicated upon the proposition,—that certain amendments proposed by initiative petition and submitted to the electors at the general election in 1918 were duly adopted and became a part of the state constitution. For the reasons stated by me in my concurring opinion in State ex rel. Linde vs. Hall, 35 N. D. 34; and in my dissenting opinions in State ex rel. Twichell vs. Hall, 171 N. W. 213, and State ex rel. Byerly vs. State Board of Canvassers, 172 N. W. 80, I am of the opinion that such alleged constitutional amendments were never constitutionally adopted, and in fact never became of the constitution of this state.

A. M. CHRISTIANSON.

77 In the Supreme Court, State of North Dakota.

E. A. GREEN, H. W. VOIGT, N. M. CHRISTIANSON and F. V. WOODWORTH, Plaintiffs and Appellants,

vs.

LYNN J. FRAZIER, Governor; WILLIAM LANGER, Attorney General; JOHN N. HAGAN, Commissioner of Agriculture and Labor; Obert Olson, Treasurer, of the State of North Dakota, and the Industrial Commission of North Dakota, Defendants and Respondents.

Petition for Writ of Error.

Now come E. A. Green, H. W. Voigt, N. M. Christianson and F. V. Woodworth, the plaintiffs named in the above entitled action by their attorney Harry Lashkowitz and would show unto this honorable court that in the record and proceedings and rendition of a judgment and decree entered on the second day of January A. D. 1920 in the above entitled action by the supreme court of the State of North Dakota, it being the highest court of said state in which a

decision could be had in said suit between E. A. Green, H. W. Voigt, H. M. Christianson and F. V. Woodworth, as plaintiffs and Lynn J. Frazier, Governor, William Langer, Attorney General, John N. Hagan, Commissioner of Agriculture and Labor, Obert Olson, Treasurer of the State of North Dakota and the Industrial Commission of North Dakota, as defendants, manifest error has occurred greatly to the damage of said plaintiffs wherefore the said plaintiffs and petitioners feel aggrieved.

That in the record and proceedings of said cause before said supreme court, it appears that there was drawn in question the validity of a statute of, or an authority exercised under, said state on the ground of their being repugnant to the constitution, treaties, or laws of the United States and the decision of said supreme court of the State of North Dakota was in favor of their validity; all of which is fully apparent in the record and the proceedings of the case and specifically set forth in the assignment of errors filed herewith.

Wherefore your petitioners pray that their appeal be allowed and that the transcript of the record, proceedings and papers upon which said order, judgment and decree were made, duly authenti-
78 cated, the order sent to the supreme court of *of* the United States at Washington, D. C., under the rules of said court in such cases made and provided, that the same may be inspected and corrected as according to law, and justice should be done.

THOS. C. DAGGETT,
St. Paul, Minnesota;
HARRY LASHKOWITZ,
Fargo, N. D.,
Attorneys for Plaintiffs and Petitioners.

Allowed:
A. M. CHRISTIANSON,
Chief Justice of the Supreme Court
of the State of North Dakota.

Dated at Bismarck, North Dakota, January 31st, A. D. 1920.

79 In the Supreme Court, State of North Dakota.

E. A. GREEN, H. W. VOIGT, N. M. CHRISTIANSON and F. V. WOODWORTH, Plaintiffs and Appellants,

vs.

LYNN J. FRAZIER, Governor; WILLIAM LANGER, Attorney General; JOHN N. HAGAN, Commissioner of Agriculture and Labor; Obert Olson, Treasurer, of the State of North Dakota, and the Industrial Commission of North Dakota, Defendants and Respondents.

Order Allowing Writ of Error.

On the 31st day of January A. D. 1920, came on to be heard the application of E. A. Green, H. W. Voigt, N. M. Christianson and

F. V. Woodworth, plaintiffs, said plaintiffs being represented by counsel for a writ of error.

And it appearing to the court from the petition filed herein and the record filed therewith that the application ought to be granted and that the transcript of the record and proceedings and papers upon which the judgment of the court was rendered, properly certified should be sent to the supreme court of the United States as prayed for in said petition, that such proceedings should be had as will be just in the premises.

It is therefore ordered that the writ of error be allowed upon the said plaintiffs, E. A. Green, H. W. Voigt, N. M. Christianson and F. V. Woodworth, giving bond conditioned as the law directs in the sum of Five Hundred (500) Dollars and that a true copy of the record, assignment of errors and all proceedings had in the case in the supreme court of the State of North Dakota shall be transmitted to the supreme court of the United States properly certified as the law directs, that the said court may inspect the same and do what, according to law, should be done.

A. M. CHRISTIANSON,
Chief Justice of the Supreme Court of the State of North Dakota.

[Endorsed:] In the Supreme Court, State of North Dakota. E. A. Green et al., Plaintiffs and Appellants, vs. Lynn J. Frazier, Governor, et al., Defendants and Respondents. Petition for Writ of Error. Order Allowing Writ of Error. Harry Lashkowitz, Attorney for Plaintiffs.

[Stamped:] 3872. Filed in the office of the clerk of the Supreme Court, State of North Dakota, Feb. 9, 1920.

80 The Supreme Court of the United States.

E. A. GREEN, H. W. VOIGT, N. M. CHRISTIANSON and F. V. WOODWORTH, Plaintiffs in Error,

vs.

LYNN J. FRAZIER, Governor; WILLIAM LANGER, Attorney General; John N. Hagan, Commissioner of Agriculture and Labor; Obert Olson, Treasurer, of the State of North Dakota, and the Industrial Commission of North Dakota, Defendants in Error.

Assignment of Errors.

And now come E. A. Green, H. W. Voigt, H. M. Christianson and F. V. Woodworth, plaintiffs in error, and make and file this their assignment of error.

I.

The Supreme Court of the State of North Dakota erred in affirming the order and judgment of the district court of the state of North Dakota for the county of Burleigh sustaining the demurrer interposed by the defendants to the original complaint filed in the cause.

II.

The supreme court of the state of North Dakota erred in holding that the constitutional provisions and statutes of the state of North Dakota mentioned in the bill of complaint do not violate the constitution of the United States and in particular, the Fourteenth Amendment of the constitution of the United States.

III.

The supreme court of the state of North Dakota erred in entering the order and judgment that the order of the district court of the state of North Dakota for the county of Burleigh sustaining the demurrers interposed by the defendants to the original bill filed in the cause be affirmed.

Wherefore the said plaintiffs in error pray that the said order and judgment be reversed.

THOS C. DAGGETT,
St. Paul, Minnesota;
HARRY LASHKOWITZ,
Fargo, N. D.,
Attorney for Plaintiffs in Error.

Read on application for writ of error, January 31st, 1920.

A. M. CHRISTIANSON,
Chief Justice of the Supreme Court
of the State of North Dakota.

[Endorsed:] In the Supreme Court of the United States. E. A. Green et al., Plaintiffs in Error, vs. Lynn J. Frazier, Governor, et al., Defendants in Error. Assignment of Errors. Harry Lashkowitz, Attorney for Plaintiffs.

[Stamped:] 3872. Filed in the office of the Clerk of the Supreme Court, State of North Dakota, Feb. 9, 1920.

81 In the Supreme Court of the State of North Dakota.

E. A. GREEN, H. W. VOIGT, N. M. CHRISTIANSON and F. V. WOODWORTH, Plaintiffs and Appellants,

vs.

LYNN J. FRAZIER, Governor; WILLIAM LANGER, Attorney General; John N. Hagan, Commissioner of Agriculture and Labor; Obert Olson, Treasurer, of the State of North Dakota, and the Industrial Commission of North Dakota, Defendants and respondents.

Bond.

Know all men by these presents that we, H. W. Voigt, plaintiff and appellant, as principal and the National Surety Company of New York City, as surety, are held and firmly bound unto the United States of America in the full and just sum of Five Hundred (500) Dollars to be paid to the United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 28th day of January, A. D. 1920.

Whereas the above named H. W. Voigt, plaintiff and appellant as aforesaid, has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the supreme court of the State of North Dakota on the second day of January, A. D. 1920.

Now therefore, the condition of this obligation is such that if the above named H. W. Voigt shall prosecute his said writ of error to affect and answer all costs and damages, if he should fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

H. W. VOIGT.
[CORPORATE SEAL.] NATIONAL SURETY COMPANY,
By J. R. MUSOLF,
G. F. DULLAM,
Its Attorneys in Fact.

[Endorsed:] In the Supreme Court of the State of North Dakota. E. A. Green et al., Plaintiffs and Appellants, vs. Lynn J. Frazier, Governor et al., Defendants and Respondents. Bond.

82 STATE OF NORTH DAKOTA,
County of Burleigh:

On this 28th day of January, A. D. 1920, before me, a notary public in and for the county and state aforesaid, personally appeared J. R. Musolf and G. F. Dullam known to me to be the persons who are described in and whose names are subscribed to the for-going undertaking as attorneys in fact of the National Surety Company

of New York City and acknowledged to me that they subscribed the name of the said National Surety Company of New York City thereto as principal and their names as attorneys in fact.

[NOTARIAL SEAL.] J. B. RHUD,
Notary Public, Burleigh County, N. Dak.

My commission expires Sept. 16, 1925.

STATE OF NORTH DAKOTA,
County of Burleigh, ss:

On this 28th day of January, A. D. 1920, before me, a notary public in and for the county and state aforesaid, personally appeared H. W. Voigt, known to me to — the person who is described in and whose name is subscribed to the foregoing undertaking acknowledged to me that he executed the same.

[NOTARIAL SEAL.] G. F. DULLAM,
Notary Public, Burleigh County, North Dakota.

My commission expires May 18, 1921.

Aprroved this 31st day of January, A. D. 1920.
A. M. CHRISTIANSON,
Chief Justice of the Supreme Court of the State of North Dakota.

[Endorsed:] In the Supreme Court the State of North Dakota E. A. Green et al., Plaintiffs and Appellants, vs. Lynn J. Frazier, Governor, et al., Defendants and Respondents. Bond.

[Stamped:] 3872. Filed in the Office of the Clerk of the Supreme Court, State of North Dakota, Feb. 9, 1920.

83 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the Honorable Judges of the Supreme Court of the State of North Dakota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the supreme court of the State of North Dakota before you, being the highest court of law or equity of said state in which a decision could be had in the said suit between E. A. Green, H. W. Voight, N. M. Christianson and F. V. Woodworth and Lynn J. Frazier, Governor, William Langer, Attorney General, John N. Hagan, Commissioner of Agriculture and Labor, Obert Olson, Treasurer of the State of North Dakota and the Industrial Commission of North Dakota, wherein was drawn in question the validity of a statute of or an authority exercised under said state, on the g-ound of their being repugnant to the constitution, treaties, or laws of the United States and the decision was in favor of their validity; a manifest error has happened to the great damage of said E. A. Green, H. W. Voight, N. M. Christianson and

F. V. Woodworth, as by their complaint appears. That being willing that error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the supreme court of the United States, together with this writ, so that you have the same at Washington within sixty days from the date hereof; that the record and proceedings aforesaid be inspected, the said supreme court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the said Supreme Court, the 31" day of January, in the year of our Lord, One Thousand, Nine Hundred and Twenty.

[Seal United States District Court, North Dakota.]

J. A. MONTGOMERY,
Clerk of the United States District Court
for the District of North Dakota.
By E. R. STEELE, *Deputy.*

Allowed by
A. M. CHRISTIANSON,
Chief Justice of the Supreme Court
of the State of North Dakota.

83½ [Endorsed:] In the Supreme Court of the United States. E. A. Green, et al., Plaintiffs in Error, vs. Lynn J. Frazier, Governor, et al., Defendants in Error. Writ of Error. Harry Lashkowitz, Solicitor for Plaintiffs in Error.

[Stamped:] 3782. Filed in the office of the Clerk of the Supreme Court, State of North Dakota, Feb. 9, 1920.

84 UNITED STATES OF AMERICA, *ss:*

To Lynn J. Frazier, Governor; William Langer, Attorney General; John N. Hagan, Commissioner of Agriculture and Labor, Obert Olson, Treasurer of the State of North Dakota and the Industrial Commission of North Dakota, Greeting:

You are hereby cited and admonished to appear at the Supreme Court of the United States at Washington within sixty days from the date hereof pursuant to a writ of error filed in the clerk's office of the supreme court of the State of North Dakota, wherein E. A. Green, H. W. Voight, N. M. Christianson and F. V. Woodworth are plaintiffs in error, and you are defendants in error, to show cause if any there be why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable A. M. Christianson, Chief Justice of the Supreme Court of the State of North Dakota, this 31st day of January in the year of our Lord One Thousand, Nine Hundred and Twenty.

A. M. CHRISTIANSON,
Chief Justice of the Supreme Court of North Dakota.

Personal service of the foregoing and receipt of copy are hereby admitted at Bismarck, N. D., this 31st day of January, 1920.

F. E. PACKARD,
Ass't Attorney General of State of North Dakota.

85 [Endorsed:] In the Supreme Court of the United States. E. A. Green, et al., Plaintiffs in Error, vs. Lynn J. Frazier, Governor, et al., Defendants in Error. Citation on Appeal. Harry Lashkowitz, Solicitor for Plaintiffs in Error.

[Stamped:] 3782. Filed in the office of the Clerk of the Supreme Court, State of North Dakota, Feb. 9, 1920.

86 STATE OF NORTH DAKOTA,
In the Supreme Court, ss:

I, J. H. Newton, Clerk of the Supreme Court within and for the State of North Dakota, by virtue of the foregoing Writ of Error, and in obedience thereto, do hereby certify that the following pages, numbered from 1 to 84 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause of E. A. Green, N. W. Voight, N. M. Christianson and F. D. Woodworth, Plaintiffs in Error, v. Lynn J. Frazier, Governor, William Langer, Attorney General, John N. Hagan, Commissioner of Agriculture and Labor, and Obert Olson, Treasurer of the State of North Dakota, and the Industrial Commission of North Dakota, Defendants in Error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of said Court to be hereunto affixed, at the City of Bismarck, in the State of North Dakota, this Sixth day of March, in the year of our Lord, one thousand nine hundred and twenty.

[Seal Supreme Court State of North Dakota.]

J. H. NEWTON,
Clerk Supreme Court.

Endorsed on cover: File No. 27,566. North Dakota Supreme Court. Term No. 811. E. A. Green, H. W. Voight, N. M. Christianson and F. V. Woodworth, Plaintiffs in Error, vs. Lynn J. Frazier, Governor; William Langer, Attorney General, et al. Filed March 20th, 1920. File No. 27,566.

Office Supreme Court, U. S.
FILED
MAR 22 1920
JAMES D. MAHER,
CLERK.

No. 811

Supreme Court of the United States

No._____

October Term, 1919

E. A. GREEN, H. W. VOIGT, N. M. CHRISTIANSON and F. V. WOODWORTH,

Plaintiffs in Error,

vs.

LYNN J. FRAZIER, GOVERNOR, WILLIAM LANGER, ATTORNEY GENERAL, JOHN H. HAGAN, COMMISSIONER OF AGRICULTURE AND LABOR, OBERT OLSON, TREASURER OF THE STATE OF NORTH DAKOTA, AND THE INDUSTRIAL COMMISSION OF NORTH DAKOTA.

Defendants.

Supreme Court of the United States

No._____

October Term, 1919

E. A. GREEN, H. W. VOIGT, N. M. CHRISTIANSON and F. V. WOODWORTH,

Plaintiffs in Error,

vs.

LYNN J. FRAZIER, GOVERNOR, WILLIAM LANGER, ATTORNEY GENERAL, JOHN H. HAGAN, COMMISSIONER OF AGRICULTURE AND LABOR, OBERT OLSON, TREASURER OF THE STATE OF NORTH DAKOTA, AND THE INDUSTRIAL COMMISSION OF NORTH DAKOTA.

Defendants.

MOTION FOR ADVANCEMENT OF HEARING.

MOTION FOR ADVANCEMENT OF HEARING.

Now come the parties to the above entitled cause the signatures of whose respective counsel are subscribed hereto, and move that the hearing upon oral argument thereof in the Supreme Court of the United States, be advanced upon the calendar and assigned to the 12th day of April, 1920.

This motion is made upon the subjoined affidavit of William Lemke to which reference is hereby made for a statement of the matter involved with the reasons for this motion.

Fargo, N. D., February 26, 1920.

Respectfully submitted,

Frederic A. Pike
of Counsel

Wm. Lemke
Attorney & Solicitor
for Frazier Hagan
& The Industrial
Commission of No. Dak.

S. L. Nuchols
of Counsel

William Langer
Attorney Gen.
State of Nor. Dak.

Thos. C. Daggett
Harry Lashkowitz
Attorneys and Solicitors
for Plaintiffs in Error.

AFFIDAVIT OF WILLIAM LEMKE.

STATE OF NORTH DAKOTA, }
COUNTY OF CASS. } ss.

William Lemke being duly sworn on his oath says that he is of counsel for Lynn J. Frazier, Governor of North Dakota, and for the Industrial Commission of North Dakota, who are certain of the defendants above named.

This affiant further says that this action involves the validity under the Constitution of the United States of certain laws of the State of North Dakota enacted by the Legislative Assembly of said state and approved February 25, 1919, said laws being Chapters 151, 147, 148, 154, 152, 153 and 150, Laws of North Dakota for 1919. Each of said laws is referred to in the bill of complaint herein.

This affiant further says that this action was commenced in the District Court of the State of North Dakota; and that upon demurrer to the complaint herein said District Court sustained the validity of said laws; that thereupon an appeal was taken by the plaintiffs to the Supreme Court of the State of North Dakota, which thereafter rendered decision and judgment affirming the decision of said District Court of North Dakota and sustaining the validity of said laws.

This affiant further says that thereafter the plaintiffs in error obtained a writ of error to the Supreme Court of the United States, asserting and claiming that there is involved herein the Federal questions arising from the disputed validity of said laws under the Constitution of the United States. Thereupon the record herein has been transmitted to the Supreme Court of the United States and this cause is now pending therein. This affiant further says that the issues of law now joined in this cause relating to the validity of said laws of the State of North Dakota are the same issues of law as those which have arisen and appear in a certain other cause now pending in the Supreme Court of the United States, to-wit, the cause of John W. Scott, et al., vs. Lynn J. Frazier, et al., No.

508, October term, 1919, in which affiant also appears as counsel and which has been assigned for hearing upon oral argument in said court on the 12th day of April, 1920. Affiant further says that by reason of the identity of issues in said two causes with respect to the validity of said laws under the Constitution of the United States, it appears that the determination of said issues in one cause will be in effect a determination of the issues in the other cause, and that therefore it will be convenient and proper that oral argument of both of said causes should be heard at the same time; and in that regard further affiant points out that the same counsel appear for defendants in both cases.

This affiant further states that reasons of public interest exist for early determination of this cause and with regard thereto affiant refers to the affidavit of Lynn J. Frazier, one of the defendants above named, made and filed in Scott vs. Frazier, No. 508, October term, 1919, wherein said Frazier is also one of the defendants and wherein he moved for advancement of hearing, said affidavit being subjoined to his said motion therein; and for convenience and avoidance of unnecessary repetition of statement this affiant hereby adopts and makes his own as a part of this affidavit the recital of facts made by said Lynn J. Frazier in said affidavit in Scott vs. Frazier with respect to the public interests affected.

William Lemke

Subscribed and sworn to before this 6th day of ~~February~~ March 1920.

J. C. Bina

Notary Public, Cass County, North Dakota.

My commission expires Aug. 31-20

GREEN ET AL. *v.* FRAZIER, GOVERNOR, ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF NORTH DAKOTA.

No. 811. Argued April 19, 20, 1920.—Decided June 1, 1920.

When a state tax authorized by the legislature pursuant to the state constitution and upheld by the highest state court is called in question under the Fourteenth Amendment upon the ground that the purposes for which it is imposed are not of a public nature, every presumption must be indulged in its favor, and the united judgments of the people, legislature and court of the State that the purposes are public will be accepted unless clearly unfounded. P. 239. *Jones* v. *City of Portland*, 245 U. S. 217.

When a State sees fit, for the promotion of the public welfare, to enter into activities which in the past have been considered as entirely within the domain of private enterprise and to assist them by taxation, the wisdom of its legislation or the soundness of the economic policy involved cannot be considered by this court in passing upon the constitutionality of the taxation. P. 240.

Under the peculiar conditions existing in North Dakota, described in the opinion of its Supreme Court in this case, *held*, that legislation which provides for engaging the State in the businesses of manufacturing and marketing farm products, and of providing homes for the people, and which appropriates money, creates a state banking system and authorizes bond issues and taxation for carrying the scheme into effect, is not unconstitutional as respects taxpayers. P. 242.

176 N. W. Rep. 11, affirmed.

THE case is stated in the opinion.

Mr. Thomas C. Daggett for plaintiffs in error.

Mr. Frederic A. Pike for defendants in error.

MR. JUSTICE DAY delivered the opinion of the court.

This is an action by taxpayers of the State of North Dakota against Lynn J. Frazier, Governor, John N.

Hagan, Commissioner of Agriculture and Labor, William Langer, Attorney General, and Obert Olson, State Treasurer, and the Industrial Commission of that State to enjoin the enforcement of certain state legislation. The defendants Lynn J. Frazier, as Governor, William Langer, as Attorney General, and John Hagan, as Commissioner of Agriculture and Labor, constitute the Industrial Commission, created by the Act of February 25, 1919, [Laws 1919, c. 151] of the Sixteenth Legislative Assembly of the State of North Dakota.

The laws involved were attacked on various grounds, state and federal. The Supreme Court of North Dakota sustained the constitutionality of the legislation. So far as the decision rests on state grounds it is conclusive, and we need not stop to inquire concerning it. *Davis* v. *Hildebrant*, 241 U. S. 565. The only ground of attack involving the validity of the legislation which requires our consideration concerns the alleged deprivation of rights secured to the plaintiffs by the Fourteenth Amendment to the Federal Constitution. It is contended that taxation under the laws in question has the effect of depriving plaintiffs of property without due process of law.

The legislation involved consists of a series of acts passed under the authority of the state constitution, which are: (1) An act creating an Industrial Commission of North Dakota [Laws, 1919, c. 151] which is authorized to conduct and manage on behalf of that State certain utilities, industries, enterprises and business projects, to be established by law. The act gives authority to the Commission to manage, operate, control and govern all utilities, enterprises and business projects, owned, undertaken, administered or operated by the State of North Dakota, except those carried on in penal, charitable or educational institutions. To that end certain powers and authority are given to the Commission, among others: the right of eminent domain; to fix the buying price of things bought,

and the selling price of things sold incidental to the utilities, industries, enterprises and business projects, and to fix rates and charges for services rendered, having in mind the accumulation of a fund with which to replace in the general funds of the State the amount received by the Commission under appropriations made by the act; to procure the necessary funds for such utilities, industries, enterprises and business projects by negotiating the bonds of the State in such amounts and in such manner as may be provided by law. $200,000 of the funds of the State are appropriated to carry out the provisions of the act. (2) The Bank of North Dakota Act, [Laws 1919, c. 147] which establishes a bank under the name of "The Bank of North Dakota," operated by the State. The Industrial Commission is placed in control of the operation and management of the bank, and is given the right of eminent domain to acquire necessary property. Public funds are to be deposited in the bank, and the deposits are guaranteed by the State of North Dakota. Authority is given to transfer funds to other departments, institutions, utilities, industries, enterprises or business projects, and to make loans to counties, cities or political sub-divisions of the State, or to state or national banks on such terms as the Commission may provide. Loans to individuals, associations, and private corporations are authorized, when secured by duly recorded first mortgages on lands in the State of North Dakota. An appropriation of $100,000 is made immediately available to carry out the provisions of the act. (3) An act providing for the issuing of bonds of the State in the sum of $2,000,000, the proceeds of which are to constitute the capital of the Bank of North Dakota. [Laws 1919, c. 148.] The earnings of the bank are to be paid to the State Treasurer. Tax levies are authorized sufficient to pay the interest on the bonds annually. The bonds shall mature in periods of five years, and the Board of Equalization is authorized to levy a tax in an amount

equal to one-fifth of the amount of their principal. The State Treasurer is required to establish a bank bond payment fund into which shall be paid moneys received from taxation, from appropriations and from bank earnings. $10,000 is appropriated for the purpose of carrying the act into effect. (4) An act providing for the issuing of bonds in the sum of not exceeding $10,000,000, to be known as "Bonds of North Dakota, Real Estate Series." [Laws 1919, c. 154.] These bonds are to be issued for the purpose of raising money to procure funds for the Bank of North Dakota to replace such funds as may have been employed by it from time to time in making loans upon first mortgages upon real estate. The faith and credit of the State of North Dakota are pledged for the payment of the bonds. Moneys derived from the sale of the bonds are to be placed by the Industrial Commission in the funds of the bank, and nothing in the act is to be construed to prevent the purchase of the bonds with any funds in the Bank of North Dakota. It is further provided that the State Board of Equalization shall, if it appears that the funds in the hands of the State Treasurer are insufficient to pay either principal or interest, accruing within a period of one year thereafter, make a necessary tax levy to meet the indicated deficiency. Provision is made for the repeated exercise of the powers granted by the act, for the purposes stated. An appropriation of $10,000 is made for carrying into effect the provisions of this act. (5) An act declaring the purpose of the State of North Dakota to engage in the business of manufacturing and marketing farm products, and to establish a warehouse, elevator, and flour mill system under the name of "North Dakota Mill and Elevator Association" to be operated by the State. [Laws 1919, c. 152.] The purpose is declared that the State shall engage in the business of manufacturing farm products and for that purpose shall establish a system of warehouses, elevators, flour mills, factories, plants, machinery

and equipment, owned, controlled and operated by it under the name of the "North Dakota Mill and Elevator Association." The Industrial Commission is placed in control of the Association with full power, and it is authorized to acquire by purchase, lease or right of eminent domain, all necessary property or properties, etc.; to buy, manufacture, store, mortgage, pledge, sell and exchange all kinds of raw and manufactured farm food products, and by-products, and to operate exchanges, bureaus, markets and agencies within and without the State, and in foreign countries. Provision is made for the bringing of a civil action against the State of North Dakota on account of causes of action arising out of the business. An appropriation is made out of state funds, together with the funds procured from the sale of state bonds, to be designated as the capital of the Association. (6) An act providing for the issuing of bonds of the State of North Dakota in a sum not exceeding $5,000,000, to be known as "Bonds of North Dakota, Mill and Elevator Series," providing for a tax and making other provisions for the payment of the bonds, and appropriations for the payment of interest and principal thereof. [Laws 1919, c. 153.] The bonds are to be issued and sold for the purpose of carrying on the business of the Mill & Elevator Association. The faith and credit of the State of North Dakota are pledged for the payment of the bonds, both principal and interest. These bonds may be purchased with funds in the Bank of North Dakota. Taxes are provided for sufficient to pay the bonds, principal and interest, taking into account the earnings of the Association. The sum of $10,000 is appropriated from the general funds of the State to carry the provisions of the act into effect. (7) The Home Building Act declares the purpose of the State to engage in the enterprise of providing homes for its residents and to that end to establish a business system operated by it under the name of "The Home Building Associa-

tion of North Dakota"; and defines its duties and the extent of its powers. [Laws 1919, c. 150.] The Industrial Commission is placed in control of "The Home Building Association," and is given the power of eminent domain, and the right to purchase and lease the requisite property. Provision is made for the formation of home building unions. The price of town homes is placed at $5,000, and of farm homes at $10,000. A bond issue of $2,000,000, known as "Bonds of North Dakota Home Building Series," is provided for.

There are certain principles which must be borne in mind in this connection, and which must control the decision of this court upon the federal question herein involved. This legislation was adopted under the broad power of the State to enact laws raising by taxation such sums as are deemed necessary to promote purposes essential to the general welfare of its people. Before the adoption of the Fourteenth Amendment this power of the State was unrestrained by any federal authority. That Amendment introduced a new limitation upon state power into the Federal Constitution. The States were forbidden to deprive persons of life, liberty and property without due process of law. What is meant by due process of law this court has had frequent occasion to consider, and has always declined to give a precise meaning, preferring to leave its scope to judicial decisions when cases from time to time arise. *Twining* v. *New Jersey*, 211 U. S. 78, 100.

The due process of law clause contains no specific limitation upon the right of taxation in the States, but it has come to be settled that the authority of the States to tax does not include the right to impose taxes for merely private purposes. *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112, 155. In that case the province of this court in reviewing the power of state taxation was thoroughly discussed by the late Mr. Justice Peckham speak-

ing for the court. Concluding the discussion of that subject (p. 158) the Justice said: "In the Fourteenth Amendment the provision regarding the taking of private property is omitted, and the prohibition against the State is confined to its depriving any person of life, liberty or property, without due process of law. It is claimed, however, that the citizen is deprived of his property without due process of law, if it be taken by or under state authority for any other than a public use, either under the guise of taxation or by the assumption of the right of eminent domain. In that way the question whether private property has been taken for any other than a public use becomes material in this court, even where the taking is under the authority of the State instead of the Federal government." Accepting this as settled by the former adjudications of this court, the enforcement of the principle is attended with the application of certain rules equally well settled.

The taxing power of the States is primarily vested in their legislatures, deriving their authority from the people. When a state legislature acts within the scope of its authority it is responsible to the people, and their right to change the agents to whom they have entrusted the power is ordinarily deemed a sufficient check upon its abuse. When the constituted authority of the State undertakes to exert the taxing power, and the question of the validity of its action is brought before this court, every presumption in its favor is indulged, and only clear and demonstrated usurpation of power will authorize judicial interference with legislative action.

In the present instance under the authority of the constitution and laws prevailing in North Dakota the people, the legislature, and the highest court of the State have declared the purpose for which these several acts were passed to be of a public nature, and within the taxing authority of the State. With this united action of people,

legislature and court, we are not at liberty to interfere unless it is clear beyond reasonable controversy that rights secured by the Federal Constitution have been violated. What is a public purpose has given rise to no little judicial consideration. Courts, as a rule, have attempted no judicial definition of a "public" as distinguished from a "private" purpose, but have left each case to be determined by its own peculiar circumstances. Gray, Limitations of Taxing Power, § 176, "Necessity alone is not the test by which the limits of State authority in this direction are to be defined, but a wise statesmanship must look beyond the expenditures which are absolutely needful to the continued existence of organized government, and embrace others which may tend to make that government subserve the general well-being of society, and advance the present and prospective happiness and prosperity of the people." Cooley, Justice, in *People* v. *Salem*, 20 Michigan, 452. Questions of policy are not submitted to judicial determination, and the courts have no general authority of supervision over the exercise of discretion which under our system is reposed in the people or other departments of government. *Chicago, Burlington & Quincy R. R. Co.* v. *McGuire*, 219 U. S. 549, 569; *German Alliance Insurance Co.* v. *Lewis*, 233 U. S. 389.

With the wisdom of such legislation, and the soundness of the economic policy involved we are not concerned. Whether it will result in ultimate good or harm it is not within our province to inquire.

We come now to examine the grounds upon which the Supreme Court of North Dakota held this legislation not to amount to a taking of property without due process of law. The questions involved were given elaborate consideration in that court, and it held, concerning what may in general terms be denominated the "banking legislation," that it was justified for the purpose of pro-

viding banking facilities, and to enable the State to carry out the purposes of the other acts, of which the Mill & Elevator Association Act is the principal one. It justified the Mill & Elevator Association Act by the peculiar situation in the State of North Dakota, and particularly by the great agricultural industry of the State. It estimated from facts of which it was authorized to take judicial notice, that 90% of the wealth produced by the State was from agriculture; and stated that upon the prosperity and welfare of that industry other business and pursuits carried on in the State were largely dependent; that the State produced 125,000,000 bushels of wheat each year. The manner in which the present system of transporting and marketing this great crop prevents the realization of what are deemed just prices was elaborately stated. It was affirmed that the annual loss from these sources (including the loss of fertility to the soil and the failure to feed the by-products of grain to stock within the State), amounted to fifty-five millions of dollars to the wheat raisers of North Dakota. It answered the contention that the industries involved were private in their nature, by stating that all of them belonged to the State of North Dakota, and therefore the activities authorized by the legislation were to be distinguished from business of a private nature having private gain for its objective.

As to the Home Building Act, that was sustained because of the promotion of the general welfare in providing homes for the people, a large proportion of whom were tenants moving from place to place. It was believed and affirmed by the Supreme Court of North Dakota that the opportunity to secure and maintain homes would promote the general welfare, and that the provisions of the statutes to enable this feature of the system to become effective would redound to the general benefit.

As we have said, the question for us to consider and de-

termine is whether this system of legislation is violative of the Federal Constitution because it amounts to a taking of property without due process of law. The precise question herein involved so far as we have been able to discover has never been presented to this court. The nearest approach to it is found in *Jones* v. *City of Portland*, 245 U. S. 217, in which we held that an act of the State of Maine authorizing cities or towns to establish and maintain wood, coal and fuel yards for the purpose of selling these necessaries to the inhabitants of cities and towns, did not deprive taxpayers of due process of law within the meaning of the Fourteenth Amendment. In that case we reiterated the attitude of this court towards state legislation, and repeated what had been said before, that what was or was not a public use was a question concerning which local authority, legislative and judicial, had especial means of securing information to enable them to form a judgment; and particularly, that the judgment of the highest court of the State declaring a given use to be public in its nature, would be accepted by this court unless clearly unfounded. In that case the previous decisions of this court, sustaining this proposition, were cited with approval, and a quotation was made from the opinion of the Supreme Court of Maine justifying the legislation under the conditions prevailing in that State. We think the principle of that decision is applicable here.

This is not a case of undertaking to aid private institutions by public taxation as was the fact in *Citizens' Savings & Loan Association* v. *Topeka*, 20 Wall. 655, 665. In many instances States and municipalities have in late years seen fit to enter upon projects to promote the public welfare which in the past have been considered entirely within the domain of private enterprise.

Under the peculiar conditions existing in North Dakota, which are emphasized in the opinion of its highest court,

if the State sees fit to enter upon such enterprises as are here involved, with the sanction of its constitution, its legislature and its people, we are not prepared to say that it is within the authority of this court, in enforcing the observance of the Fourteenth Amendment, to set aside such action by judicial decision.

Affirmed.